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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

October 16, 2013
9:35 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

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(Trial resumed)

THE COURT: Good morning, everyone.

MR. MASTRO: Good morning, your Honor.

THE COURT: We have two pieces of unfinished business from yesterday. The first is the attempt by the defendants to examine Mr. Veiga on the subject of what I will call the alleged Borja incident. I have reviewed where we have been on this, and I am prepared to rule now.

In the *Salazar* or Count Nine case, I sustained at the pleading stage the portion of the unclean hands defense that alleged an attempt by Chevron to frame a judge and to pressure another, which includes the alleged Borja incident. So the defendants are entitled in general to go into that.

We have here, however, a witness who, as far as I know, has no personal knowledge whatsoever on the subject, although I could be mistaken. He is also an attorney. Examination of him on the subject implicates attorney-client privilege and work product issues in a very substantial and complicated way. Despite what I thought I understood yesterday to have been some conclusory assertions that the crime fraud exception applies here, there has been no showing at all to support that.

So where I come out on it is that I will allow very narrow, targeted examination with respect to this incident into whatever the witness may know by virtue of personal observation

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1 or unprivileged communications. If in the fullness of time
2 there is a persuasive crime fraud showing that would allow
3 broader examination, I don't exclude recalling the witness at
4 that point. I would suggest to the defense that it might make
5 more sense to hold open that possibility, skip this subject for
6 now, and see where we get with the evidence on the incident, if
7 anywhere. But I am not going to shut you down if you want to
8 try. If I do conclude that we are just wasting a lot of time
9 now because we are just getting tied up in endless wrangling
10 about privilege, I may shut it down, subject to the right to
11 reopen it later, depending on what evidence there is, but
12 that's my ruling on that point, and I hope it's sufficiently
13 clear.

14 Everybody understand where we are?

15 MR. FRIEDMAN: It is clear, your Honor. I think what
16 we will do, if it's OK, if we can recall him if we need to, I
17 will just leave the issue, and I will try to get it in through
18 Mr. Borja's deposition directly.

19 THE COURT: That's fine, but I gave you the choice.

20 MR. FRIEDMAN: I understand.

21 THE COURT: Because I think, in light of the limited
22 state of the record, it's clearly still in.

23 Now, the other piece that was left open yesterday was
24 this allegation of surveillance and examination of the witness
25 with respect to that, and I thank counsel for their speedily

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1 prepared memoranda overnight. And my ruling is it's out. It's
2 out for a lot of reasons. It's out, first of all, because it's
3 completely irrelevant. It's out, second of all, because the
4 only even arguable relevance argument that I can see, or for
5 that matter has really been made, is that it's somehow
6 pertinent to unclean hands. I don't accept that argument. It
7 is not.

8 The argument made in Mr. Donziger's memoranda
9 overnight that the special master to some extent gave some very
10 limited latitude in examining a different witness during
11 depositions on this subject is not persuasive. There is a
12 difference between discovery and trial and the scope of
13 appropriate examination.

14 The Donziger defendants in their memorandum also
15 raised the crime fraud exception. They begin from the premise
16 that it's apparently an undisputed fact that surveillance and
17 recording individuals without their consent is illegal in
18 Ecuador. Well, in my understanding it is not undisputed, and
19 indeed, there is nothing before me to suggest that there is the
20 slightest truth to the statement.

21 We have known in this case since 2011 that various
22 issues of foreign law might arise. I required well over two
23 years ago that the parties serve statements under Rule 44.1
24 identifying the foreign law they relied on, and everyone did.
25 These have been supplemented as recently as the last couple of

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1 weeks. On no occasion did either side raise the issue of the
2 legality under Ecuadorian law of surveillance of the sort that
3 apparently we are concerned with here, not at all, despite
4 repeated court orders to do so, if that was going to be a
5 contention. I am not going to entertain it now. Moreover,
6 even if it were illegal under Ecuadorian law, it's just not
7 sufficiently related to the equity in suit to be pertinent.

8 Now, in addition, the consequences of the failure to
9 raise this properly are extraordinarily clear. As I think I
10 have drawn to the parties' attention previously, in the *Bel-Ray*
11 case, 181 F.3d 435, the Third Circuit held that it was the
12 burden of the parties to raise issues of foreign law and
13 provide the district court with satisfactory materials and
14 evidence to determine foreign law, and if that does not occur,
15 the court by default applies the law of the forum. The law of
16 the forum is New York. There is no right of privacy under New
17 York law. New York is very much an outlier on this, but it is
18 the fact and the New York Court of Appeals has said over and
19 over again. There is simply not an issue here.

20 Now, the next argument made in support of crime fraud
21 is that if in fact Chevron was conducting surveillance of
22 persons on the other side, that would have been a violation, to
23 the extent lawyers were involved, of the New York Rules of
24 Professional Conduct, which prohibit lawyers from using methods
25 of obtaining evidence that violate the legal rights of third

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1 persons.

2 Now, given what I have said already, it fails at the
3 get-go because there is no violation of legal rights of a third
4 person given the state of the record and the law. But even if
5 there were, the exception to the attorney-client privilege is
6 for crime or fraud, not breaches of professional ethics, and
7 there we are on that.

8 Having said all of that, I can't help but observing
9 that if there is any evidence at all of any surveillance by
10 Chevron, and of course what the facts really are I don't know,
11 but I can only go on the basis of the record, it is
12 extraordinarily limited. The memorandum filed overnight
13 contains this statement: "Mr. Donziger personally has for
14 years been living with the reality confirmed by professional
15 investigation that his movements and those of his family,
16 friends and associates and his lawyers are being tracked,
17 monitored and surveilled and perhaps much more." And he cites
18 two items. The first thing he cites is a declaration, it
19 appears at docket item 1197-2, of a professional investigator.

20 Now, I remember that declaration very well. It is a
21 declaration of an investigator who either observed or was told
22 that on one instance there was a car with strange men on the
23 street outside Mr. Donziger's apartment on -- I won't indicate
24 where. And that when Mr. Donziger came out, if I remember it
25 correctly, the car seemed to follow him. Well, gang, I hate to

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1 tell you, but things like that happen all the time in New York,
2 and they don't have anything to do with professional
3 investigators, and in any case, one incidence does not
4 surveillance make, if it was what Mr. Donziger thinks it was.

5 There is a reference also to some testimony in
6 Mr. Carson's deposition that there were 20 or 30 reports
7 regarding Mr. Donziger. It's not clear from the memorandum
8 that was filed as to what they were reports of, and in any
9 case, 20 or 30 reports, over a period of now 20 years, don't
10 make much of a surveillance program.

11 Now, all that said, I note also that there is evidence
12 in the record that the defendants in this case engaged in
13 surveillance activities against Chevron. Mr. Fajardo has made
14 it clear that they monitor "people tied to Chevron," such as
15 Guerra and Reyes in his view, so that they can, and I am
16 quoting again "know what they are doing and where they are
17 traveling frequently." He admitted, for example, that they
18 have discovered previous activities of Mr. Guerra by "asking
19 for the information, the migration movements of Mr. Guerra,
20 where he goes and where he can be found." That appears in
21 docket item 759, Exhibit 3, at pages 4 and 5.

22 In any case, that issue is out of the case. It's
23 gone, and we can proceed.

24 Now, Mr. Mastro, is there something else?

25 MR. MASTRO: Yes, your Honor, just a few very brief

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1 points.

2 Your Honor admitted into evidence yesterday over our
3 objection two documents that were written by a Mr. Singer and a
4 Mr. Gidez, who are not Chevron employees, they are outside
5 contractors. I just wanted to clarify that under 801(c), they
6 are statements that may have been made, but I hope your Honor
7 would not admit them for the truth of the matters asserted.
8 They are not statements by Chevron. They were simply
9 statements made to Chevron by outsiders.

10 THE COURT: I have your point, and this being a
11 nonjury point, I will consider it if, as and when it becomes
12 appropriate.

13 MR. MASTRO: Thank you, your Honor.

14 Two, the protocol we worked out about the declarations
15 and objections to a declaration, declarations get filed after
16 admitted. Objections get filed. They were filed last night in
17 Mr. Veiga's case. We would like to have as part of that
18 protocol that we can within 24 hours of their objections give
19 your Honor a response to their objections also in writing.

20 THE COURT: Any objection in proceeding that way, Mr.
21 Friedman?

22 MR. FRIEDMAN: No, your Honor.

23 THE COURT: We will proceed that way.

24 MR. MASTRO: If we can, your Honor, since we have had
25 multiple witnesses here --

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1 THE COURT: I should have asked Mr. Gomez.

2 Mr. Gomez.

3 MR. GOMEZ: No, your Honor.

4 MR. MASTRO: Also, since we have had multiple
5 witnesses here at the courthouse, I understand from Mr.
6 Friedman that he is now going to have about another hour with
7 Mr. Veiga and Mr. Gomez will also have some time with him. Can
8 we get some real estimation of the cross for the next two or
9 three witnesses because they are all here ready to testify.
10 That is Mr. Bogart, that is Mr. Russell, and that is Sara
11 McMillen.

12 MR. FRIEDMAN: If I could ask your Honor, before I
13 respond to that, could I just trouble the Court for the
14 citation you gave on the foreign law? It was the F.3d cite,
15 181 F.3d, and I missed the page.

16 THE COURT: 435.

17 MR. FRIEDMAN: Thank you.

18 Your Honor, with the Court's permission, we would like
19 Mr. Gomez to take the lead on Mr. Bogart, and I would
20 follow-up. He can give you his estimate of how long that will
21 be.

22 THE COURT: How long, Mr. Gomez?

23 MR. GOMEZ: Your Honor, I would say probably about two
24 hours.

25 MR. FRIEDMAN: My guess is I would be 10 to 15

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1 minutes.

2 THE COURT: OK.

3 MR. MASTRO: How about Mr. Russell?

4 MS. LITTLEPAGE: I will be about two hours, maybe two
5 and a half.

6 MR. MASTRO: That makes it extremely unlikely we will
7 get past those witnesses today. We have a third, though, ready
8 to go, and that would be Sara McMillen.

9 MS. LITTLEPAGE: I don't perceive that we will get to
10 Ms. McMillen today.

11 MR. MASTRO: Do you have an estimate of the time?

12 MS. LITTLEPAGE: No. I haven't completely finished my
13 cross of Ms. McMillen. I would assume two to three hours for
14 Ms. McMillen.

15 MR. MASTRO: OK. Your Honor, one other point I wanted
16 to make. There were offers of proof that Mr. Friedman made
17 repeatedly yesterday after your Honor made rulings. I then had
18 to get up and say there was absolutely no basis or evidence in
19 this record or any witness who would say any such thing.

20 The offers of proof themselves were improper under the
21 Second Circuit standards. You are not supposed to be giving
22 rambling offers of proof without the specific testimony you
23 expect to elicit from the witness and the basis in the record
24 for why you think you can elicit that. So I just wanted to
25 make that point. It will save us a lot of time if we have

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1 targeted offers of proof to say exactly what you think the
2 witness would say and exactly the basis in this record for what
3 witness or evidence you have to support that.

4 THE COURT: You rely on what authority for the
5 proposition that you just cited?

6 MR. MASTRO: I am relying both on Second Circuit's
7 decision in *International Minerals and Resources*, 5 Fed.Appx 5,
8 page 9, Second Circuit 2001. The quote is, The Offer of proof
9 must be specific and counsel must show what he expects to prove
10 by the testimony of the witness.

11 And *In Re Chateaugay Corp.*, a bankruptcy Southern
12 District case, that rambling narration of allegations, at the
13 end of which, as a profession, that if there were complete
14 discovery, we would be able to get these facts through these
15 questions.

16 THE COURT: Mr. Mastro, I am sure that Mr. Friedman
17 and Mr. Gomez are grateful to you for bringing to their
18 attention an alleged deficiency that, if it's relevant to
19 anybody at all, is relevant only on appeal should we ever get
20 there.

21 Let's move on.

22 MR. MASTRO: Finally, your Honor, just so the record
23 is complete, I appreciate your Honor's ruling on the
24 investigation and surveillance issue. Had it ever been raised
25 in the 44.1s, we would have offered expert testimony.

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1 THE COURT: We don't have to do this. We are just
2 taking up a lot of time.

3 MR. MASTRO: I am done, your Honor.

4 Now we are going to call Mr. Veiga back to the stand.

5 THE COURT: All right.

6 RICARDO REIS VEIGA, resumed.

7 THE COURT: Mr. Veiga, you are still under oath.

8 CROSS-EXAMINATION (Cont'd)

9 BY MR. FRIEDMAN:

10 Q. Good morning, Mr. Veiga.

11 A. Good morning.

12 Q. I would like to move on to a new subject if I could.

13 Would you tell us who attorney Racines is? I am not
14 sure I am pronouncing the name right.

15 A. Yes, I do. Alberto Racines is an associate with Adolfo
16 Callejas & Associates.

17 Q. Did Mr. Racines report to you as well?

18 A. No. Mr. Racines would report to Mr. Adolfo Callejas.

19 Q. I am not going to ask you what you learned, but at some
20 point did you learn that Judge Guerra had approached Chevron
21 to, in his words, fix the case?

22 A. Yes, I did.

23 Q. I want to ask you about some specific time periods.

24 During August to October of 2009, August to October of
25 2009, did you have at that point any knowledge that Judge

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Veiga - cross

1 Guerra had approached Chevron to fix the case?

2 A. I don't remember specifically the time frame. I had
3 knowledge through communications from counsel of the events
4 that you're referring to.

5 Q. Maybe if I broaden the time. During 2009 at all, were you
6 aware of Judge Guerra having approached Chevron to fix the
7 case?

8 A. Vaguely, my recollection is sometime in 2009.

9 Q. Now, during the fall of 2010, we are now a year further
10 along, during that time period, did you have knowledge that he
11 had again approached Chevron to fix the case?

12 A. Again, this knowledge was through communications with
13 counsel. And the answer is yes.

14 Q. Thank you.

15 Was there a reason that Chevron did not report Judge
16 Guerra to the authorities from making this inquiry?

17 MR. MASTRO: Just instructing the witness not to
18 reveal anything that would be word product.

19 MR. FRIEDMAN: I will withdraw the question, your
20 Honor, and I will come at it in a different way.

21 Q. First of all, I should ask, to your knowledge, did Chevron
22 ever report either of those incidents to the authorities?

23 A. To my knowledge, the answer is no.

24 Q. To your knowledge, did Chevron ever try to tape Judge
25 Guerra in the process of approaching them in 2009 or 2010 with

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Veiga - cross

1 offers to fix the case?

2 MR. MASTRO: Again, work product issue and lack of
3 foundation.

4 THE COURT: Well, I think you're going to have to come
5 at this one step at a time, Mr. Friedman.

6 Q. Let's focus in on 2009 time frame. Are you aware of any
7 efforts by Chevron to tape Judge Guerra during that time frame?

8 MR. MASTRO: Objection. Same objection.

9 THE COURT: Look, there may be a privileged issue
10 here. There may be an attorney work product issue here. Can I
11 suggest to you that let's try and find out first if he has got
12 personal knowledge of any of this, apart from what he was told
13 by lawyers. And then if you want to ask a question about
14 lawyers, then you will get your answer to that, and then we
15 will find out whether he has got lawyer source information.
16 And then if you ask about that, then presumably there will be
17 an objection and I will have to rule on it.

18 Q. Mr. Veiga, did you have any personal knowledge of efforts
19 by Chevron to tape Judge Guerra in 2009?

20 A. No, sir.

21 Q. Did you have any knowledge from information conveyed to you
22 by non-attorneys of Chevron attempting to tape Judge Guerra in
23 that time period?

24 A. Not to my knowledge.

25 Q. Do you have any knowledge of Chevron attempting to tape

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Veiga - cross

1 Judge Guerra during that time period either way, either a
2 decision to do it or not do it, because of communications from
3 lawyers during that time period?

4 A. No.

5 Q. So how is it that you knew that in 2009 Judge Guerra had
6 approached Chevron?

7 MR. MASTRO: Your Honor, that's work product.

8 THE COURT: That's the objection, it's work product?

9 MR. MASTRO: It's privileged communication too.

10 THE COURT: No. How he knew is not a privileged
11 communication.

12 MR. MASTRO: It's fine, your Honor.

13 THE COURT: The question is argumentative, counsel,
14 because you say, So how is it you knew? It seems to be an
15 impossible given that he didn't know anything about any
16 consideration of taping and it's a complete disconnect.

17 Let's try to rephrase.

18 Q. Can you tell us how you learned that Judge Guerra had
19 approached Chevron for taping?

20 THE COURT: I think you misspoke.

21 Q. Did you learn that Judge Guerra had approached Chevron due
22 to direct contact or personal knowledge of your own?

23 MR. MASTRO: Asked and answered, your Honor.

24 THE COURT: Sustained.

25 Look, he testified that at some point he learned of

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Veiga - cross

1 the Guerra approaches through counsel, his words.

2 MR. FRIEDMAN: You're right. I'm sorry, your Honor.
3 I just got tangled up.

4 THE COURT: Next question.

5 Q. Do you have any personal knowledge of Chevron's attempts to
6 tape Judge Guerra in the 2010 time period?

7 THE COURT: Sustained. You're assuming facts not in
8 issue.

9 Q. Were there attempts by Chevron to tape Judge Guerra in
10 2010?

11 A. I don't have any personal knowledge of that.

12 Q. Do you have knowledge of attempts to tape Judge Guerra
13 through reports by attorneys?

14 MR. MASTRO: That goes to the substance of the reports
15 received from the attorneys, but I think he has already made
16 clear he has no knowledge on this subject.

17 THE COURT: It's the witness who answers the
18 questions, not the lawyers. The bottom line of all of this is,
19 are you objecting to the question or not?

20 MR. MASTRO: I was objecting to the question on the
21 basis that it conveys potentially the substance of what lawyers
22 would have communicated to him.

23 THE COURT: So that objection is sustained as to form.
24 It's not exactly form. It's sustained on the privilege ground
25 because of the form of the question. The form of the question

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Veiga - cross

1 directly going to the privileged communication, if there were
2 any.

3 Q. I want to ask you, in '09, in 2010, or in 2012, did
4 Chevron, from your personal knowledge, ever report Judge Guerra
5 to the authorities?

6 A. I don't have any personal knowledge of that.

7 Q. In 2012, when Judge Guerra approached Chevron, were you
8 involved in the negotiations between Judge Guerra and Chevron?

9 A. I was not.

10 Q. The negotiations between Judge Guerra and Chevron, were
11 they reported to you -- let me just stop there. Were they
12 reported to you?

13 A. Not exclusively to me, but everything that I know came from
14 counsel.

15 Q. Did you have any decision-making authority as to the deal
16 that was worked out with Judge Guerra?

17 A. No, sir.

18 Q. I want to turn then to another section of your declaration.
19 I don't know if you will need to refer to it, but it's
20 paragraphs 63. Do you have it up there?

21 A. I think I do. One second. Which paragraph, please?

22 Q. Paragraph 63.

23 THE COURT: Perhaps someone can put it on the screen
24 for me.

25 Q. Mr. Veiga, this is the section of your declaration that

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Veiga - cross

1 begins or is titled, "Lago Agrio plaintiffs collude to bring
2 bogus criminal allegations." Is that correct?

3 A. That's correct.

4 Q. Then what follows is -- this goes to paragraph 129 talking
5 about the --

6 A. 100?

7 Q. 129, paragraph 129.

8 MR. FRIEDMAN: Your Honor, I would be happy to provide
9 you my copy.

10 THE COURT: My law clerk just ran up to get it off my
11 desk. Thank you.

12 Q. Basically, the next paragraphs up to 129 continue sort of
13 the story of the criminal charges from your point of view. Is
14 that a fair statement?

15 A. That's my declaration.

16 Q. And by bogus criminal charges, you mean that the criminal
17 charges lacked factual support, is that right?

18 A. What I mean by bogus is that there was clearly an ulterior
19 motive for bringing this criminal charge against me and
20 Mr. Rodrigo Perez at the time. And I suspected that, and I
21 think I have seen data, e-mails and some of the crude outtakes
22 that I could review to confirm the ulterior motive, which was
23 to force Chevron into a settlement.

24 Q. When you say ulterior motives, you mean the Donziger
25 defendants and the other lawyers working with them, is that who

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Veiga - cross

1 you mean had ulterior motives?

2 A. That's correct sir.

3 Q. In Ecuador, do private parties have the right to file
4 criminal charges or are criminal charges filed by the
5 government?

6 MR. MASTRO: It calls for a legal conclusion.

7 THE COURT: Sustained.

8 Q. Who filed these criminal charges against you?

9 A. The office of the prosecutor general of Ecuador.

10 Q. Did you believe that that office had ulterior motives?

11 A. That office had previously, four times, dismissed the same
12 charge against me and Mr. Rodrigo Perez. Four different
13 prosecutors assigned to the criminal investigation did not find
14 any evidence of criminal conduct. So for me the fact that it
15 was reopened was an indication that there was political
16 pressure involved, and the two motivations, which basically
17 sustained my declaration that those were bogus criminal
18 charges, was the fact that Mr. Donziger and the plaintiff's
19 attorneys wanted to annul the settlement agreement, and they
20 wanted to force Chevron to settle.

21 I think I mention this in my declaration. The
22 suspicions that I had were confirmed through documentation that
23 I reviewed and some of the outtakes and e-mails exchanged by
24 Mr. Donziger with other attorneys working on the case on the
25 part of the plaintiffs, and even government officials in

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Veiga - cross

1 Ecuador.

2 Q. So if you could help us just quickly go through the -- when
3 were the first criminal charges filed against you,
4 approximately?

5 MR. MASTRO: Mr. Veiga referred to multiple
6 investigations. Is he referring here to just the filing of the
7 a charge? You don't know the time frame?

8 MR. FRIEDMAN: I am asking him.

9 MR. MASTRO: Sorry, your Honor.

10 MR. FRIEDMAN: I don't want to get it wrong. I am
11 just asking him when the first criminal charges were filed.

12 A. I would like to get a clarification from you, what exactly
13 do you mean by criminal charge, because the process in Ecuador
14 starts with a criminal investigation. And the criminal
15 investigation started around 2003, end of 2003.

16 Q. All right. And you had said that there were four separate
17 times that prosecutors had dropped charges, I think was the
18 word you used, is that right?

19 A. There were four prosecutors that wrote opinions dismissing
20 the charge or any charge for lack of any evidence.

21 Q. So the first charge was in 2003?

22 A. Again --

23 MR. MASTRO: That misstates his testimony. These were
24 investigations.

25 THE COURT: I don't need the testimony through you,

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Veiga - cross

1 Mr. Mastro. The witness said now twice that there were four
2 occasions when prosecutors dismissed or dropped charges.
3 Counsel is entitled to ask him when.

4 MR. MASTRO: Certainly.

5 Q. So the first time was in 2003, is that right?

6 A. 2003 is when the first crude investigation started. There
7 was a period of approximately two years that those
8 investigations took place. I remember going at least twice to
9 Ecuador to grant my testimony to the prosecutors. And I
10 believe in 2005, it could be a different date, the prosecutor
11 general of Ecuador, my recollection is a woman named Cecilia
12 Armas, basically wrote an opinion dismissing, for total lack of
13 evidence, the charge for falsification of public documents.
14 And there was another conclusion by a lower prosecutor, a
15 recommendation by a lower prosecutor, that was investigating
16 alleged crimes against the environment and --

17 Q. Let me interrupt for just a second. Is this the second set
18 of charges that you referred to?

19 A. When the investigation started, there was a bifurcation of
20 the investigation. So two prosecutors -- two different
21 prosecutors were assigned to the different investigations. One
22 on the alleged falsification of public documents and the other
23 one on the alleged crimes against the environment. So there's
24 two prosecutors, special prosecutors assigned. They wrote
25 opinions, and the prosecutor general of the country, I don't

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Veiga - cross

1 remember exactly the date, Cecilia Armas then wrote an opinion
2 discharging any criminal allegations for lack of evidence and
3 recommended the present supreme court to archive the file.
4 That was the first one.

5 The second one was --

6 Q. Can I interrupt you for a second?

7 THE COURT: Stop interrupting. You asked the question
8 and now let's hear the answer.

9 Go ahead, Mr. Veiga.

10 A. So I mentioned to you two special prosecutors wrote
11 opinions, which I believe are in the file, dismissing this
12 charge. Then the prosecutor general of the country, which is
13 the highest prosecutor in Ecuador, wrote another opinion
14 dismissing the charge. She was replaced by another prosecutor
15 general I believe named Jorge German, who also wrote, at least
16 a couple of times that I remember, to the same present supreme
17 court saying that those charges had been dismissed and the
18 process should be archived.

19 There was another one, which was ultimately the
20 prosecutor general that reopened the case in 2007, under the
21 administration of President Correa, who had previously also
22 dismissed those charges. I think the name of the prosecutor
23 was Washington Pesantez.

24 So those were the four different times where this
25 charge had been investigated and dismissed for total lack of

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Veiga - cross

1 evidence, and I think that this is what I described in my
2 declaration.

3 Q. I just want to ask you some questions to make sure I am
4 understanding.

5 The first charges were in 2003 and one prosecutor was
6 looking at falsification of documents?

7 A. The investigation started in 2003, and the investigation
8 was bifurcated into two different subjects. One was alleged
9 crimes against the environment and the second one was the
10 alleged falsification of public documents. Two special
11 prosecutors were assigned to those two different
12 investigations, and they basically concluded that there was no
13 evidence to move forward with any formal charge.

14 Q. What was the third subject of investigation? You said
15 there were four sets of charges. We have gone through
16 falsification of documents and the environmental one that were
17 bifurcated when they were first filed. What is the third set
18 of charges you are referring to?

19 A. I'm sorry. I don't think I said that, but let me clarify.
20 The investigation started -- the two sets of investigations
21 were two, one falsification of documents, second one alleged
22 crimes against the environment. So those are the two
23 subsections of the same investigation. They assigned two
24 different prosecutors. I don't know why. It may be just
25 because how they organize themselves.

DAG8CHE1

Veiga - cross

1 So there were investigations in parallel. And in the
2 two investigations, the prosecutors assigned, they dismissed
3 any possible charge for lack of evidence. And that basically
4 followed the process up to the prosecutor general of the
5 country, which then dismissed any allegations of criminal
6 conduct, and basically dismissed the investigation without
7 proceeding and the request of the court to basically archive
8 the process. And when I say four different times, it is
9 because it had four different prosecutors looking into this and
10 four different prosecutors wrote written opinions dismissing
11 this charge for total lack of evidence.

12 Q. I see. Thank you. That helps.

13 So is it your view that the charges in 2003 relating
14 to falsification of documents were bogus in 2003?

15 A. I suspect that they were bogus because they were based on a
16 report from the controller general, and these investigations of
17 the controller general took place two years before 2003, 2001 I
18 think. And it took two years for the controller general to
19 move forward, and the dates of the time were very close to the
20 dates where the plaintiffs filed the Lago Agrio complaint.

21 So I suspected that the timing of the report and the
22 timing of the negotiation were right after the plaintiffs
23 decided to move forward with the Lago Agrio complaint. And,
24 also, right after we file our response, actually we read our
25 response into the files claiming that those claims were barred

DAG8CHE1

Veiga - cross

1 by the settlement agreement, it was the subject of the criminal
2 allegations. So I suspected that they were bogus and those
3 charges had an ulterior motive.

4 That suspicion was actually confirmed when I reviewed
5 the e-mail, memoranda outtakes in which the plaintiff's
6 attorneys are all over stating that the criminal case was key
7 for them in the Lago Agrio defense. And I believe that Mr.
8 Donziger has even admitted under oath that settling the case
9 was one of the main purpose behind pushing the criminal charge.
10 That's my declaration. It's my reading of the files. And I
11 guess I gave you all the information that you ask me.

12 Q. Yes. Thank you.

13 MR. GOMEZ: Move to strike. Mr. Veiga is interpreting
14 e-mails which he didn't write, he didn't receive, and in our
15 view, he doesn't have personal knowledge to interpret the
16 motivations of persons who wrote those e-mails. They are
17 out-of-court statements. He wasn't involved in those
18 conversations and his response should be stricken.

19 THE COURT: Mr. Mastro.

20 MR. MASTRO: Your Honor, he was asked the question
21 whether he, his views on whether this was bogus going back to a
22 time in 2003 forward, and he is explaining his view. That
23 testimony was elicited by Mr. Friedman. So it's perfectly
24 appropriate that he provide the basis for why he has that view
25 in the answer. It was elicited by defendants' counsel so the

DAG8CHE1

Veiga - cross

1 answer should stand, your Honor.

2 THE COURT: Overruled.

3 Mr. Gomez, had you wished to avoid that testimony, the
4 time to have objected is when Mr. Friedman asked for it. In
5 any case, I am fully aware, as I made clear yesterday, of the
6 difference between personal opinions and personal knowledge,
7 and we will act accordingly.

8 BY MR. FRIEDMAN:

9 Q. Mr. Veiga, the heart of the falsification documents charges
10 was that TexPet and certain Ecuadorian officials had acted
11 improperly in executing certain documents relating to the
12 settlement agreements, is that correct?

13 A. You have to be a little more precise what certain documents
14 you are talking about.

15 Q. I was hoping to avoid going through all of the documents.
16 Generally speaking --

17 THE COURT: I think we have gotten beyond the point
18 where this is helpful to anything. If the documents are
19 relevant, they speak for themselves. They speak for themselves
20 anyway. Now let's get on with it.

21 Q. Both sets of criminal charges, the environmental and the
22 falsification of documents charges, were based upon the
23 remedial action plan entered into between TexPet and Ecuador,
24 is that correct?

25 MR. MASTRO: Objection.

DAG8CHE1

Veiga - cross

1 THE COURT: Sustained.

2 MR. FRIEDMAN: Your Honor, the declaration of Mr.
3 Veiga goes on for numerous paragraphs.

4 THE COURT: Didn't we discuss this all yesterday and
5 didn't I make a ruling substantially in your favor on it?

6 MR. FRIEDMAN: You excluded the broad admission of
7 documents and testimony, although I don't think you actually
8 ruled on the testimony yet, but you excluded the documents. As
9 I recall your ruling, they wouldn't be wholesale admitted, your
10 Honor, but the narrow point that I am trying to get at is that
11 the charges were not bogus. And if this is going to serve as a
12 predicate act in plaintiff's case that bogus charges were filed
13 against defendants, then I need to be able to explore whether
14 in fact the charges were bogus or not.

15 MR. MASTRO: He asked to close the door yesterday and
16 your Honor granted his motion. Now he wants to open it?

17 THE COURT: That's exactly right. Finito. You won
18 yesterday. You have to live with the ruling.

19 MR. FRIEDMAN: Your Honor, the ruling was to keep the
20 agreements out. It was not to not allow any talk at all
21 about --

22 THE COURT: Why do you suppose we kept the agreements
23 out? Look, we are not trying the Ecuadorian environmental
24 case, and we are not trying the Ecuadorian criminal
25 proceedings. They are background. They are facts that

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Veiga - cross

1 occurred. Everybody knows what occurred. Now let's move on.

2 MR. FRIEDMAN: Your Honor, I agree with you. We
3 shouldn't be retrying those cases.

4 THE COURT: That's exactly what you're trying to do.

5 MR. FRIEDMAN: No, your Honor. If I could, what I am
6 trying to do is defend against the predicate act that the
7 defendant or that Chevron has made throughout the complaint and
8 now throughout this declaration that the charges were bogus,
9 that they did not have a factual basis.

10 Now, we don't have to try the whole case to
11 investigate whether the charges were bogus or not, but I don't
12 know how something can be a predicate act and we not be allowed
13 to investigate or talk about it in the trial.

14 THE COURT: You know, I don't remember a single
15 allegation in the complaint making this or anything like it a
16 predicate act, which is a term of art, as you know. Maybe you
17 can draw my attention to it.

18 MR. FRIEDMAN: If I could take just a minute I will do
19 that.

20 THE COURT: I will tell you what. Rather than do it
21 that way, move on to something else and after the break, if you
22 have something, you can bring it to my attention.

23 MR. FRIEDMAN: OK. Thank you.

24 We have it here, your Honor.

25 Paragraph 3 of the amended complaint, your Honor. It

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Veiga - cross

1 would be the bottom of paragraph 3 and the top of paragraph 4,
2 your Honor.

3 I can move on and we can take this up after the break.

4 THE COURT: Go ahead.

5 MR. FRIEDMAN: I just draw the Court's attention to
6 it, and I will take some time to look at it more carefully.

7 BY MR. FRIEDMAN:

8 Q. Mr. Veiga, is it your view that Mr. Donziger and the other
9 plaintiff's lawyers had a lot of control and influence over the
10 Ecuadorian legal system?

11 MR. GOMEZ: Objection, your Honor. It calls for
12 speculation.

13 THE COURT: Sustained.

14 (Continued on next page)

DAGLCHE2

Veiga - cross

1 BY MS. FRIEDMAN:

2 Q. In your declaration you discuss your belief that
3 Mr. Donziger and the other plaintiff lawyers influenced the
4 Ecuadorian legal system; is that correct?

5 A. Can you point out the section you're referring to?

6 Q. Yes. Paragraph 101.

7 A. 101?

8 Q. 101, 102.

9 A. Yes, sir.

10 Q. And then paragraph 79.

11 THE COURT: Is there a question about paragraph 101?

12 MS. FRIEDMAN: What I'm trying to do is refresh his
13 recollection, your Honor, with these paragraphs, and then I
14 hope that will be faster than asking him a question.

15 MR. MASTRO: He didn't say he needed his recollection
16 refreshed, your Honor. He was asking for clarification in the
17 question.

18 THE COURT: That's what I thought. But let's bear
19 with Mr. Friedman for a minute.

20 THE WITNESS: I read it.

21 Q. Okay. And if we just stay on 79 then, your view is that --
22 I'm at the top of page 23 -- referring to bogus criminal
23 charges brought as part of a scheme by Donziger and his allies
24 in collusion with the Republic of Ecuador to extort settlement
25 from Chevron by threatening me and Mr. Perez Pallares with jail

DAGLCHE2

Veiga - cross

1 time, etc.

2 Was it your view that Mr. Donziger and his allies were
3 colluding with the Republic of Ecuador around these criminal
4 charges?

5 A. Yes.

6 Q. And the Republic of Ecuador was colluding -- was
7 cooperating with the plaintiffs to use the criminal charges
8 against you to leverage Chevron into a settlement?

9 A. Yes.

10 Q. And several of the charges, as you've told us, were
11 dismissed before President Correa was elected; is that correct?

12 A. That's correct.

13 Q. And you believe that they manipulated and conspired with
14 President Correa's administration to resurrect those charges?

15 A. That's correct.

16 Q. And on April 29, 2010, you were charged again; is that
17 correct?

18 A. I don't remember the date, but.

19 Q. That would be at paragraph 107 of your declaration.

20 A. 107.

21 MR. MASTRO: Your Honor, objection to form. He left
22 out part of paragraph 107.

23 MS. FRIEDMAN: All I'm trying to do is get the date,
24 your Honor.

25 THE COURT: Yeah. Overruled.

DAGLCHE2

Veiga - cross

1 A. It is in my declaration.

2 Q. All right. And that when these charges were resurrected,
3 President Correa had been president for four years,
4 approximately?

5 A. President Correa, my recollection is President Correa took
6 office at the beginning of 2007.

7 Q. All right. So three years, two and a half years, he'd been
8 president for several years at the time these criminal charges
9 were reinstated?

10 THE COURT: Don't you think the parties could figure
11 out when the date was and stipulate to it. Let's move along.

12 Q. And in -- actually, can I have Exhibit 272, please,
13 Defendant's Exhibit 272. I'm sorry, it's Plaintiff's
14 Exhibit 272, your Honor.

15 Is this a copy -- I'm not sure what the technical word
16 is, but the official legal document that was filed resurrecting
17 the criminal charges against you?

18 MR. MASTRO: Objection, your Honor.

19 THE COURT: What is the objection?

20 MR. MASTRO: It's the resurrecting that this is a
21 formal charge document. He never had a formal charge before
22 this, only investigations.

23 THE COURT: Mr. Mastro, you got to control these
24 speaking objections.

25 MR. MASTRO: I was just explaining the nature of the

DAGLCHE2

Veiga - cross

1 objection, your Honor. Used the word resurrected.

2 THE COURT: It is unnecessary to do that by feeding
3 the answer to the witness.

4 MR. MASTRO: I'm not trying to do that, your Honor.
5 Sorry.

6 THE COURT: I didn't say try.

7 Q. Is this the criminal charging document that you were
8 referring to in your declaration?

9 A. That's correct, sir.

10 MS. FRIEDMAN: Your Honor, I'd move for admission of
11 272.

12 MR. MASTRO: No objection, your Honor.

13 THE COURT: Received. Not for the truth of the
14 matter.

15 (Plaintiff's Exhibit 272 received in evidence)

16 Q. And in 2011, this charge was dismissed; is that right?

17 A. It was dismissed.

18 Q. If you would look at paragraph 125.

19 A. You're talking about my declaration?

20 Q. Yes, thank you. You say in your declaration that evidence
21 obtained in the 1782 proceedings in the U.S. was used in your
22 defense in Ecuador?

23 THE COURT: Not exactly what it says, Mr. Friedman.

24 Q. You said Chevron paid U.S. counsel at least 1 million,
25 among other things, to uncover evidence through 1782 discovery

DAGLCHE2

Veiga - cross

1 proceedings in the United States to be used in our defense of
2 the criminal allegations in Ecuador; is that correct?

3 THE COURT: That's what it says. Next question.

4 A. That's correct.

5 Q. All right. What are the "among other things"?

6 A. Expense, and we also had -- I had to retain counsel in
7 United States to advise me on possible extradition requests
8 from Ecuador.

9 Q. Okay. So you're saying that there were other expenses in
10 addition to the 1 million; is that what you're saying?

11 A. That's correct.

12 Q. And you said that the 1782 proceedings uncovered evidence
13 to be used in our defense of the criminal allegations in
14 Ecuador.

15 What evidence obtained in the 1782 discovery
16 proceedings was used in your defense to the criminal
17 allegations in Ecuador?

18 A. Basically evidence of collusion between Mr. Donziger and
19 his lawyers in Ecuador with government officials to put
20 pressure on the Correa administration to reopen charge that had
21 been dismissed by four different previous prosecutors in
22 Ecuador.

23 Q. And how was that information used, what did you do with it
24 or what did your lawyers do with it?

25 MR. MASTRO: Objection.

DAGLCHE2

Veiga - cross

1 THE COURT: Sustained.

2 MS. FRIEDMAN: Your Honor, I'm not sure what the
3 objection was.

4 THE COURT: Well, I think it was objection. I think,
5 among other things, the words work product were used. I
6 sustained the objection.

7 Q. Was any of the 1782 material that was discovered in the
8 United States submitted to the court in Ecuador?

9 MR. MASTRO: Your Honor, the record speaks for itself.

10 THE COURT: I don't even know if there was a court
11 proceeding. Was there a court proceeding on this?

12 MS. FRIEDMAN: I guess it depends how you define court
13 proceeding. There was this criminal complaint process.

14 THE COURT: Well, you know, I know how that works in
15 the United States district courts. I don't know how criminal
16 complaints work in Ecuador.

17 MS. FRIEDMAN: I don't either. That's why I was
18 asking.

19 THE COURT: But your question presupposed that you
20 knew and that your understanding was correct.

21 MS. FRIEDMAN: Well.

22 THE COURT: Look, I don't know what the point of this
23 is. This is just a colossal side trip.

24 MS. FRIEDMAN: Well, I think that this is in the
25 declaration because this is harm that Chevron is alleging as

DAGLCHE2

Veiga - cross

1 part of its RICO case and that's why I'm asking these
2 questions.

3 THE COURT: Look, if there were a damage claim in the
4 case anymore, maybe there would be some point to this about the
5 million dollars, but there isn't. All right?

6 MS. FRIEDMAN: Are you taking a position that Chevron
7 doesn't have to prove economic harm in order to succeed in this
8 case?

9 THE COURT: I only make rulings. I don't take
10 positions. I'll take a position sooner or later.

11 MS. FRIEDMAN: And in the meantime, your Honor, I have
12 to be worried that.

13 THE COURT: In the meantime what you have to do is
14 comply with my rulings. That objection is sustained. If you
15 wish to proceed, ask your next question.

16 Q. Mr. Veiga, if we could go to Exhibit 395, I'll bring you up
17 a copy. It's the verdict written by Judge Zambrano.

18 THE COURT: Plaintiff or defendant?

19 MS. FRIEDMAN: Defendant, I believe, your Honor, yes.

20 THE COURT: I note your statement "written by Judge
21 Zambrano" is a hotly controverted issue in this case.

22 MS. FRIEDMAN: Fair enough.

23 THE COURT: You may be aware of that.

24 MS. FRIEDMAN: I wasn't trying to advocate. I was
25 just.

DAGLCHE2

Veiga - cross

1 THE COURT: I understand. Bearing his name.

2 MS. FRIEDMAN: Bearing his name.

3 MR. MASTRO: Thanks for that clarification.

4 It's also a Plaintiff's Exhibit 399 with an English
5 translation, Plaintiff's Exhibit 400, and we have -- we really
6 only need it to come in once, your Honor. But we have it both.

7 THE COURT: Well, right now it seems to be the first
8 time, right?

9 MR. MASTRO: It is. It is, your Honor, and obviously.

10 THE COURT: Obviously, there's no objection to it to
11 the extent that it is offered other than for the truth of the
12 matters asserted.

13 MR. MASTRO: Correct, your Honor.

14 THE COURT: All right. So it is received as being the
15 judgment in Ecuador, not for the truth of anything contained
16 therein.

17 I take it that's the offer, right, Mr. Friedman?

18 MS. FRIEDMAN: It is the offer at this point. I'm
19 going to be asking the witness about the truth of matters in
20 the verdict. But, yes, it's offered not for the truth, but
21 this is the verdict.

22 MR. MASTRO: Your Honor, the one problem, we have a
23 certified translation that this is not the stipulated one.

24 THE COURT: Early in the game here I insisted that the
25 parties stipulate to a translation of this document. And in

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Veiga - cross

1 one of the very few instances where that ever happened in this
2 case, you did.

3 MR. MASTRO: We did, your Honor.

4 THE COURT: Okay. So I'm striking Defendant's
5 Exhibit 395 unless somebody is going to tell me it is the
6 stipulated translation.

7 Anybody claim it's the stipulated translation?

8 MS. FRIEDMAN: Can I have a second, your Honor.

9 MR. MASTRO: PX400 is the stipulated translation, your
10 Honor. I'd have to check whether the one that was just handed
11 to me is a copy of that or not. That's all, your Honor. I
12 just want to make sure the stipulated translation is in.

13 MS. FRIEDMAN: I'm being told this should be the
14 stipulated translation, your Honor.

15 THE COURT: You're being told it should be. I think
16 it should be too, but let's find out if it is.

17 MS. FRIEDMAN: Well, I guess I could ask to look at
18 Chevron's copy.

19 MR. MASTRO: We're pulling it now, your Honor. Sorry
20 about that.

21 THE COURT: Mr. Friedman, I'd also bring to your
22 attention that you indicated you would be one more hour with
23 this witness, and we passed the hour mark some time ago. Are
24 you about done?

25 MS. FRIEDMAN: No, your Honor. I apologize for that.

DAGLCHE2

Veiga - cross

1 I'll get better at predicting as we go along, but I was not
2 anticipating the struggles we had this morning.

3 THE COURT: Well, what do you estimate now?

4 MS. FRIEDMAN: Well, if I could just check first to
5 see if we have the same transcript, then I'll give you an
6 estimate.

7 MR. MASTRO: Actually, your Honor, we have the one
8 that was agreed upon. It's not that one, but I'm happy to give
9 it to Mr. Friedman to use. It's Plaintiff's Exhibit 400 and
10 it's the certified translation that the parties had agreed upon
11 earlier.

12 THE COURT: And do the defendants accept that?

13 MR. MASTRO: And I'm not a technical expert, your
14 Honor, but I'm told there is a switch that needs to be turned
15 on so that documents can come up on the screen. Thank you.
16 That part is way beyond my pay grade.

17 THE COURT: All right. Now, Mr. Friedman, Mr. Gomez,
18 do you agree that Plaintiff's Exhibit 400 is the stipulated
19 translation of the Lago Agrio judgment?

20 MS. FRIEDMAN: Yes, we do, your Honor.

21 THE COURT: Mr. Gomez?

22 MR. GOMEZ: Yes, your Honor.

23 THE COURT: All right. It's received but not for the
24 truth of the matter asserted.

25 (Plaintiff's Exhibit 400 received in evidence)

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Veiga - cross

1 THE COURT: Now, how long Mr. Friedman?

2 MS. FRIEDMAN: If I could just have one more second,
3 your Honor, I'll be able to tell you.

4 I think I'm going to stop here -- just a few more
5 questions. I'll be done in five minutes.

6 THE COURT: Wonderful.

7 MS. FRIEDMAN: All right.

8 THE COURT: Let's go.

9 BY MS. FRIEDMAN:

10 Q. Mr. Veiga, to your knowledge, is there a criminal
11 investigation going on in Ecuador right now looking into
12 Chevron's fraud in the verdict allegations?

13 MR. MASTRO: Objection, privilege, work product.

14 THE COURT: Well, it's sustained on more grounds than
15 that.

16 MR. MASTRO: I understand, your Honor.

17 THE COURT: Next question.

18 Q. Are you aware through any nonprivileged sources such as
19 newspapers, articles, things of that kind, that there's a
20 criminal investigation going on in Ecuador looking into
21 Chevron's fraud allegations?

22 MR. MASTRO: Objection to form and relevance.

23 THE COURT: Sustained.

24 MS. FRIEDMAN: I'm done, your Honor.

25 THE COURT: Thank you.

DAGLCHE2

Veiga - cross

Mr. Gomez.

CROSS-EXAMINATION

BY MR. GOMEZ:

Q. Good morning, Mr. Veiga.

A. Good morning.

MS. FRIEDMAN: I'm sorry, Mr. Gomez.

I think there's a misunderstanding between us, your Honor. If I could just clarify, this goes to the bogus criminal charges issue. I thought you ruled that we were not entitled to go into that. Did I misunderstand that?

THE COURT: We are not trying the question of whether there was a basis for the charges. End of discussion.

MS. FRIEDMAN: That's what I understood. Thank you.

THE COURT: The claim is -- well, whatever. Let's move on. At the behest of any party.

Mr. Gomez.

Q. Mr. Veiga, you don't know Hugo Camacho, do you?

A. No, I don't.

Q. And you don't know Javier Piaguaaje, do you?

A. Not personally.

Q. And you have never spoken to either Hugo Camacho or Javier Piaguaaje; is that correct?

A. No, not that I recall.

Q. You have no knowledge, sir, that Hugo Camacho or Javier Piaguaaje personally made any criminal accusations against you

DAGLCHE2

Veiga - cross

1 to anyone; is that correct?

2 A. Are you asking me in their personal capacities?

3 Q. Yes, as individuals. Do you have any knowledge that Hugo
4 Camacho ever accused you of any crime to anyone?

5 A. No.

6 Q. Do you have any knowledge that Javier Piaguaje accused you
7 of any crime to anyone?

8 A. Only through their agent, Mr. Donziger.

9 Q. But first answer my question. You have no knowledge
10 that --

11 THE COURT: He did answer your question. He said
12 only. Let's move on.

13 Q. Through their attorneys. So do you have knowledge,
14 Mr. Veiga, that Mr. Camacho told his attorneys to accuse you of
15 a crime; do you have knowledge of that?

16 MR. MASTRO: Objection, your Honor.

17 THE COURT: Look, can we simplify this. It has been
18 reasonably claimed to me throughout this case, but let's see if
19 I'm accurate in my understanding, that Chevron's claims, which
20 as I remember are all state law based tort claims, or at least
21 non-RICO claims, are all based on one or another vicarious
22 liability theory, most notably and possibly exclusively the
23 assertion that their agents, acting within the scope of the
24 agent's authority, committed various torts and other wrongs and
25 that there is no suggestion that any of them personally did

DAGLCHE2

Veiga - cross

1 anything of a tortious nature.

2 Is that an accurate statement, Mr. Mastro?

3 MR. MASTRO: Your Honor, it is accurate that Chevron's
4 claims against the two individual defendants here, Camacho and
5 Piaguaje, are based on a vicarious or derivative liability
6 theory based on either agency or ratification.

7 THE COURT: All right. Thank you. I think that will
8 save you a lot of time.

9 MR. GOMEZ: Yes, your Honor.

10 THE COURT: Mr. Gomez.

11 Q. Mr. Veiga, do you have any knowledge that Hugo Camacho
12 ratified any of his attorneys' actions to seek criminal
13 sanctions against you?

14 MR. MASTRO: Objection, your Honor. Also calls for a
15 legal conclusion.

16 THE COURT: It certainly does the latter. Rephrase.

17 Q. What knowledge do you have that Hugo Camacho or Javier
18 Piaguaje ratified any of the conduct that you alleged in your
19 declaration?

20 MR. MASTRO: Same objection, your Honor.

21 THE COURT: Overruled.

22 A. The evidence that I have is there was never any statements
23 disavowing this kind of conduct by their agent.

24 Q. What conduct exactly are you talking about, sir?

25 THE COURT: The conduct you asked about, Mr. Gomez.

DAGLCHE2

Veiga - cross

1 The conduct alleged in the declaration. Let's go on.

2 Q. Mr. Veiga, your charges originally arose from a criminal
3 complaint that the Comptroller General Genaro Pena Ugalde
4 submitted to the prosecutor general in October of 2003; is that
5 correct?

6 MR. MASTRO: Misstates the testimony and the evidence,
7 your Honor, objection.

8 THE COURT: The witness can answer.

9 THE WITNESS: Would you repeat your question, please.

10 Q. Yes. The charges against you, did they originally arise
11 from a criminal complaint or denuncia that the Comptroller
12 General Genaro Pena Ugalde submitted to the prosecutor general
13 in October of 2003?

14 A. Yes, partially, yes.

15 Q. Do you have any knowledge that any of the attorneys
16 representing Hugo Camacho met with general Genaro Pena Ugalde
17 to persuade him to file that complaint?

18 A. I don't have any personal knowledge of any meetings between
19 Mr. -- the comptroller general and any of these attorneys.

20 Q. Do you have any knowledge that the attorneys did anything
21 to pressure the comptroller general Genaro to file that
22 criminal complaint against you in October of 2003?

23 A. No.

24 Q. And when, directing your attention to your statement,
25 paragraph 107, Dr. Alvear, Ecuador's acting prosecutor

DAGLCHE2

Veiga - cross

1 general --

2 A. Would you tell me which section, please?

3 Q. I'm sorry, paragraph 107 of your testimony, sir.

4 According to your testimony, it was Dr. Alvear,
5 Ecuador's acting prosecutor general in April 29, 2010, who
6 issued a prosecutorial opinion that reinstated these criminal
7 charges; is that correct?

8 A. That's what my declaration says.

9 Q. Sir, do you have any knowledge that any of the attorneys
10 working on behalf of Hugo Camacho met with Dr. Alvear on or
11 around April 29 of 2010, and persuaded him to file that
12 complaint against you?

13 A. I don't have any knowledge of any meetings between
14 Mr. Camacho and Mr. Piaguaje personally with the prosecutor
15 general.

16 Q. I'm asking specifically about their attorneys. Do you have
17 any knowledge that their attorneys, Mr. Donziger, Mr. Fajardo
18 in Ecuador, that they met with Dr. Alvear on or about April 29,
19 2010, to pressure him to issue criminal charges against you?

20 A. I believe that my declaration refers to documentation
21 exchanges between Mr. Fajardo and Mr. Donziger, referring to
22 meetings that they had with prosecutor general Washington
23 Pesantez, which was Mr. Alvear's boss.

24 Q. Other than those emails, do you know whether they actually
25 met with that controller, with that prosecutor general, and

DAGLCHE2

Veiga - cross

1 pressured him to file the criminal charges against you or just
2 met with him and discussed it?

3 MR. MASTRO: Objection form, your Honor.

4 THE COURT: Sustained as to form.

5 Q. Other than those emails, Mr. Veiga, do you have any other
6 evidence that any attorneys met with Dr. Alvear, Ecuador's
7 acting prosecutor general, on or about April 29, 2010 to
8 discuss anything?

9 MR. MASTRO: Objection to form, your Honor. Asked and
10 answered about his personal knowledge.

11 THE COURT: Overruled.

12 THE WITNESS: Would you repeat the question, please.

13 (Record read)

14 A. I don't have -- I don't have any other evidence of meetings
15 with Dr. Alvear. I do mention in my declaration outtakes that
16 refer to meetings and conversations between Mr. Fajardo and
17 President Correa.

18 Q. But there are no outtakes of meetings between Mr. Fajardo
19 and Mr. Alvear, the acting prosecutor general, who filed the
20 formal accusation against you; is that correct, sir?

21 THE COURT: There are probably no outtakes of meetings
22 with Yogi Berra either. Let's move this along.

23 Q. Sir, your charges were finally dismissed in August of 2011;
24 is that correct?

25 A. That's correct, sir.

DAGLCHE2

Veiga - cross

1 Q. And you have absolutely no reason to believe whatsoever
2 that Judge Zambrano used the criminal allegations against you
3 as a basis for issuing his judgment against Chevron; is that
4 correct?

5 A. I don't know what Mr. Zambrano has used to issue his
6 decision.

7 Q. And you have absolutely no reason to believe that the
8 Ecuadorian Court of Appeals, who affirmed the judgment, in any
9 way because of the criminal allegations that were made against
10 you; is that correct?

11 A. It's the same answer.

12 Q. Sir, you testified that during the period of 2003 to 2009,
13 you were essentially in charge of day-to-day activities
14 regarding the Ecuadorian litigation; do you remember that?

15 THE COURT: His testimony stands. What's your next
16 question.

17 Q. Is it true that during that time period, Chevron mounted a
18 massive public campaign to discredit global expert Richard
19 Cabrera in Ecuador?

20 MR. MASTRO: Objection, argumentative, form.

21 THE COURT: Sustained.

22 Q. Isn't it true, sir, that during that time period Chevron
23 did what it could to make it impossible for Mr. Richard Cabrera
24 to perform his job in the field?

25 MR. MASTRO: Objection, argumentative, form.

DAGLCHE2

Veiga - cross

1 THE COURT: Sustained.

2 Q. Mr. Veiga, during that time period, isn't it true that
3 Chevron's workers were directing insults at Richard Cabrera
4 while he worked in the field?

5 MR. MASTRO: Objection.

6 THE COURT: Sustained.

7 Q. Mr. Veiga, do you recall Richard Cabrera writing a letter
8 to the court indicating that Chevron's workers were directing
9 insults at him while he did his work in the field?

10 THE COURT: Can you possibly explain to me what the
11 witness's memory of such an event, assuming it occurred, would
12 be relevant to in this case in the sense of making a point at
13 issue either more or less probable than without the testimony
14 as to whether the witness remembers any such letter; would you
15 mind doing that?

16 MR. GOMEZ: I'll withdraw the question, your Honor.

17 THE COURT: Next question.

18 Q. Mr. Veiga, do you have any knowledge that Hugo Camacho or
19 Javier Piaguaje authorized any of their attorneys to conceal
20 facts about the Ecuadorian litigation?

21 A. I don't have any personal knowledge, but they never
22 disavowed, they never came clear. And they continued to try to
23 benefit from a judgment that is a result of fraud and
24 misconduct of their agent. And they continue to try to
25 perpetrate this fraud by forcing the fraudulent judgment

DAGLCHE2

Veiga - cross

1 against Chevron in other jurisdictions. And in my point of
2 view, trying to benefit from enforcing a fraudulent decision is
3 itself committing fraud.

4 Q. When you say they didn't disavow, what exactly do you
5 expect my clients to do?

6 THE COURT: What he expects is not relevant.

7 Look, I understand both sides are playing to an
8 audience outside this courtroom. But the judicial resources of
9 the United States are a limited resource, and this is not a
10 forum for that kind of stuff for either side. And let's get on
11 with the question of what the proof is about what happened.
12 I'm going to have something to say to Chevron about that
13 subject too before we're done this morning.

14 Q. Mr. Veiga, do you have any knowledge, do you know of any
15 evidence that demonstrates that Hugo Camacho or Javier Piaguaje
16 were aware of any misrepresentations to U.S. courts?

17 A. Again, other than through the acts of their agent, no.

18 Q. Are you aware that Mr. Hugo Camacho and Javier Piaguaje are
19 aware of the specific actions of their attorneys with respect
20 to the Ecuadorian litigation?

21 A. I don't have any personal knowledge.

22 MR. MASTRO: Calls for speculation, your Honor.

23 MR. GOMEZ: I have nothing further, your Honor.

24 THE COURT: Thank you. Will there be a redirect?

25 MR. MASTRO: No, your Honor.

DAGLCHE2

Veiga - cross

1 THE COURT: Okay.

2 MS. FRIEDMAN: Your Honor, we had talked about looking
3 at the amended complaint over the break to see if it talks
4 about sham criminal charges or bogus criminal charges.

5 THE COURT: That wasn't exactly what it was about. It
6 was about predicate acts.

7 MS. FRIEDMAN: And predicate acts.

8 THE COURT: Yeah, I've looked in the meantime, and I
9 do understand that there are predicate act allegations.

10 MS. FRIEDMAN: So I would ask the Court for permission
11 to question Mr. Veiga about the bogusness or shamness of these
12 charges.

13 THE COURT: Denied. It's out of the case for both
14 sides. We are not trying that issue.

15 Chevron, I take it, has no objection; is that right?

16 MR. MASTRO: The merits of the criminal charge?

17 THE COURT: Correct.

18 MR. MASTRO: We're not alleging the merits of the
19 criminal charge, your Honor.

20 THE COURT: Well, I'm sure opinions will differ on
21 whether you did, but I'm ruling it out of the case either way.
22 Do you have a problem with that?

23 MR. MASTRO: Your Honor, we don't have a problem with
24 the criminal charges not being a part of the case. We do
25 argue --

DAGLCHE2

Veiga - cross

1 THE COURT: The merits of.

2 MR. MASTRO: The merits of them, right, not being a
3 part of the case.

4 THE COURT: Okay.

5 MR. MASTRO: That was never our allegation, your
6 Honor.

7 THE COURT: Look, I don't have to get into whether it
8 was ever your allegation. If it was, it's not anymore, right?

9 MR. MASTRO: Correct, your Honor, the merits of the
10 criminal case not in the case.

11 THE COURT: Okay. Mr. Veiga, thank you. You are
12 excused.

13 (Witness excused)

14 THE COURT: We're going to take a short break.

15 The point I want to make to Chevron is this. Lawyers
16 quite understandably take every possible opportunity to argue
17 their cases. The witness statements, which I have read 19 of
18 so far, are no exception to that in many cases in the sense
19 that they are filled with argument by the witnesses, the
20 witnesses' purported understandings of various events to which
21 they have no personal knowledge, and other matter which if it
22 were offered on the stand during direct testimony would be
23 objected to and sustained.

24 And that's why we have spent a day and a half on the
25 cross-examination of Mr. Veiga in large measure, not entirely.

DAGLCHE2

Veiga - cross

1 You know, I can't fault Mr. Friedman for rising to every piece
2 of bait that Chevron tossed on the waters here in Mr. Veiga's
3 statement.

4 This case will go a lot more quickly, it will be tried
5 a lot more efficiently, if that sort of stuff which would not
6 be admissible on a summary judgment motion, is not admissible
7 at trial were purged from all of these statements to the extent
8 it's in there and revised statements turned over in a timely
9 way and if the defense resists the temptation to do the same
10 when they present theirs.

11 I would simply urge that that be done. I realize it's
12 very hard to switch gears on a dime. It can't be done for
13 today and tomorrow. Today is already Wednesday. Tomorrow is
14 Thursday. But maybe by next week we can start somewhat fresh.

15 MR. MASTRO: Understand your Honor's words and we will
16 do it. It's not something we can do for the next couple
17 witnesses obviously.

18 THE COURT: I recognize that.

19 MR. MASTRO: We will definitely review the statements
20 with that in mind.

21 THE COURT: Let me suggest that the way you do it is
22 to resist another inevitable temptation and that is to put new
23 things in. All right. The best thing you can do is to take a
24 great big black magic marker, and I don't mean this necessarily
25 literally, but it might be the best way, and just cross out all

DAGLCHE2

Veiga - cross

1 of the sorts of things that I'm talking about.

2 I don't mean to suggest either side that anybody leave
3 out anything that you have a good faith argument is admissible
4 in evidence and based on the personal knowledge of the witness
5 or for some other reason appropriately offered. I'm not saying
6 anybody should curtail any legitimate proof. But the place for
7 argument is elsewhere. Okay?

8 MR. MASTRO: Understood, your Honor. Thank you.

9 THE COURT: Okay we'll take a break.

10 (Recess)

11 THE COURT: Okay. Let us proceed.

12 MR. MASTRO: Your Honor, Chevron calls its next
13 witness, Christopher Bogart.

14 CHRISTOPHER BOGART,

15 called as a witness by the Plaintiff,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MASTRO:

19 THE COURT: You may proceed, counsel.

20 MR. MASTRO: Yes, your Honor.

21 Q. Mr. Bogart, I want to hand you what's been marked
22 Plaintiff's Exhibit 3100, ask you to identify it for the
23 record, please.

24 A. This is my written direct testimony in this matter.

25 Q. Hand you the original.

DAGLCHE2

Bogart - direct

1 And did you sign that declaration on the last page,
2 sir?

3 A. I did.

4 Q. And at the time you signed your declaration, was it true
5 and accurate?

6 A. It was.

7 Q. And is everything in your declaration true and accurate
8 today?

9 A. It is.

10 Q. Do you offer your declaration as your direct testimony
11 today?

12 A. I do.

13 MR. MASTRO: Your Honor, I offer Plaintiff's
14 Exhibit 3100.

15 THE COURT: Received on the same basis as the previous
16 witness statement.

17 (Plaintiff's Exhibit 3100 received in evidence)

18 MR. MASTRO: And, your Honor, I'm also handing up
19 3100A, which is a list of the exhibits in the Bogart
20 declaration.

21 THE COURT: Those exhibits are received on the same
22 basis as the previous, the exhibits in conjunction with the
23 previous witness statement.

24 (Plaintiff's Exhibit 3100A received in evidence)

25 MR. MASTRO: Thank you, your Honor.

DAGLCHE2

Bogart - direct

1 And, your Honor, as I said last Wednesday, there were
2 some questions that I wanted to put to Mr. Bogart that were not
3 addressed in his declaration about some of the allegations made
4 in more recent motion practice about Burford's dealings with
5 Chevron.

6 THE COURT: Go ahead.

7 MR. GOMEZ: Your Honor, may I be heard on that
8 application?

9 THE COURT: Yes, Mr. Gomez.

10 MR. GOMEZ: Your Honor, your individual practices
11 clearly state that a witness under control of a party is
12 required to submit their direct testimony only by written
13 declaration absent good cause. Nothing as I recall that
14 Mr. Mastro mentioned last Wednesday or today has been any kind
15 of a showing of good cause. This witness has been under the
16 control of Chevron ever since the settlement agreement was
17 signed. That settlement agreement required Mr. Bogart to
18 cooperate and to testify at trial.

19 THE COURT: So your point is there has not been a
20 showing of good cause; is that right?

21 MR. GOMEZ: That's correct.

22 THE COURT: What's the good cause, Mr. Mastro?

23 (Continued on next page)

DAG8CHE3

Bogart - direct

1 MR. MASTRO: Your Honor, the fact is that Burford and
2 Mr. Bogart are independent of Chevron. Mr. Bogart had
3 previously provided a declaration, which in sum and substance
4 is substantially similar, in many respects identical to the
5 declaration provided last April. So he wants to, as an
6 independent witness, also have the opportunity to respond to
7 some of those allegations that were not in his original
8 declaration.

9 THE COURT: What allegations are you talking about?

10 MR. MASTRO: I am talking about the allegations, your
11 Honor, that he was coerced into giving his declaration last
12 April by Chevron, and the allegations about why Burford, in
13 their words in their motion practice, is spurned.

14 THE COURT: Isn't the appropriate way that if there is
15 any attempt to impeach his testimony along those lines, you can
16 go into it on redirect?

17 MR. MASTRO: I can, your Honor. I would simply
18 suggest that the one question that they raised that he was
19 somehow coerced into giving his declaration, he should have the
20 opportunity to respond to that.

21 THE COURT: Is that going to be a contention,
22 gentlemen?

23 MR. GOMEZ: Your Honor, the cross-examination is going
24 to deal with credibility issues, your Honor. I imagine it will
25 come up.

DAG8CHE3

Bogart - direct

1 THE COURT: Well, you don't imagine at all. You're
2 the principal cross-examiner.

3 MR. GOMEZ: It will come up, your Honor. His
4 motivations for signing the declaration, for being here as a
5 witness, are central to the cross-examination.

6 THE COURT: OK. So the discussion is whether it
7 happens now or it happens on redirect. I will hear it now.

8 MR. MASTRO: Thank you, your Honor.

9 BY MR. MASTRO:

10 Q. Mr. Bogart, one question. What reaction, if any, do you
11 have to the allegation that Chevron "coerced" you into giving
12 your declaration in this case?

13 A. It's flatly untrue. It's certainly true that Burford
14 entered into a settlement agreement with Chevron under which we
15 agreed to provide testimony. But that's a far cry from our
16 testimony being coerced. In fact, I wrote my declaration,
17 which as you pointed out earlier, became this testimony myself.
18 I swore to its truth. It was true then and it remains true
19 today. And candidly, anyone who knows me would reject out of
20 hand the suggestion that I could be coerced into giving
21 untruthful testimony.

22 Q. Thank you, Mr. Bogart.

23 MR. MASTRO: I turn the witness over.

24 THE COURT: Cross, Mr. Gomez.

25 MR. GOMEZ: I would like to begin by showing the

DAG8CHE3

Bogart - direct

1 witness the settlement agreement that he just referred to.

2 THE COURT: What is the exhibit?

3 MR. GOMEZ: It's Exhibit 1307.

4 THE COURT: Defendants' or plaintiff's?

5 MR. GOMEZ: Defendants'.

6 THE COURT: 1367 or 1307?

7 MR. GOMEZ: 1307.

8 May I approach the witness?

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. GOMEZ:

12 Q. Good morning, Mr. Bogart.

13 A. Good morning.

14 Q. Mr. Bogart, you're being shown what has been marked as
15 Defendants' Exhibit 1307. Would you take a moment to look at
16 that, sir?

17 A. Yes. I have flipped through it.

18 Q. Is this the settlement agreement between Burford and
19 Chevron?

20 A. Yes. It appears to be.

21 Q. Sir, isn't it true that this settlement agreement contains
22 a term that requires Burford to cooperate fully with Chevron on
23 page 4 of 14, paragraph 3A?

24 A. With respect to discovery and testimony, yes.

25 Q. Isn't it true that the settlement agreement between Burford

DAG8CHE3

Bogart - cross

1 and Chevron requires you personally, Mr. Bogart, to either
2 testify in person, by deposition, or by written statement in
3 this particular case for Chevron?

4 A. Yes.

5 Q. Isn't it also true, sir, that the settlement agreement
6 between Burford and Chevron prohibits anyone associated with
7 Burford from making any statements that disparage, are inimical
8 to, or damage the reputation of Chevron, as per paragraph 7 on
9 page 9 of 14 of this exhibit?

10 MR. MASTRO: The document speaks for itself.

11 THE COURT: I made this point at the pretrial
12 conference a week ago. I don't believe in having witnesses, in
13 effect, parrot back documents. It's not a good use of time. I
14 can read the document. I know what it says and you can make
15 your arguments at an appropriate time.

16 Now, if there is something in particular that you want
17 to use as a predicate to some question that goes beyond the
18 document, I have no objection to you drawing his attention to
19 the particular portion and then asking your question.

20 MR. GOMEZ: Thank you, your Honor.

21 Q. Drawing your attention, Mr. Bogart, to page 9 of 14,
22 paragraph 7, the nondisparagement clause. Was it the intention
23 of the parties that the nondisparagement clause applied to any
24 public statement?

25 MR. MASTRO: He can speak to his intention.

DAG8CHE3

Bogart - cross

1 THE COURT: Yes. Limit the question.

2 Q. Was it your intention, Mr. Bogart, that this
3 nondisparagement clause applied to any public statement?

4 A. Well, presumably so. It's a standard mutual
5 nondisparagement clause.

6 Q. It also applies to any forum, is that correct?

7 A. To any form or any forum?

8 Q. Any statement in any forum.

9 A. Well, presumably so. I don't see that wording, but I am
10 not going to quibble with you.

11 Q. That would include this forum, the U.S. court?

12 A. Again, Mr. Gomez, it's a standard settlement agreement,
13 mutual nondisparagement clause.

14 THE COURT: I think the suggestion that's being put to
15 you is that you're contractually obligated, irrespective of the
16 truth, to testify here in a way that doesn't disparage Chevron.
17 That's the implication of counsel's question. Is that your
18 understanding?

19 MR. GOMEZ: No, your Honor.

20 THE COURT: I am asking the witness.

21 THE WITNESS: I thought that's where he was going, and
22 I reject the insinuation if so.

23 Q. Doesn't the agreement require you to consider, if you're
24 testifying truthfully, whether that truthful statement is
25 somehow disparaging or harmful to Chevron?

DAG8CHE3

Bogart - cross

1 A. To be perfectly honest, I read it as to public statements
2 distinct from my testimony.

3 Q. Mr. Bogart, who proposed the settlement agreement that we
4 are looking at here today, Chevron or Burford?

5 A. Could you be a little bit clearer about whether you're
6 talking about the document or the concept?

7 Q. The concept.

8 A. There were, as there often are in such matters, mutual
9 discussions between the parties that led to this agreement.

10 Q. Which party initiated those discussions, Bogart or Chevron?

11 A. To be perfectly honest, because they didn't include me
12 directly, I am not sure that I can answer that question for
13 you.

14 Q. Do you know what litigation this settlement agreement was
15 meant to settle?

16 A. Was meant to?

17 Q. To settle or resolve.

18 A. Well, as it says, any claims that Chevron could bring
19 against Burford and the other entities named in the agreement.

20 Q. At the time this settlement was entered, had Burford
21 threatened to sue Chevron?

22 A. Not to my recollection.

23 Q. At the time that this settlement was executed, had Chevron
24 threatened to sue Burford?

25 A. Probably, yes.

DAG8CHE3

Bogart - cross

1 Q. Please explain.

2 THE COURT: That's not a question.

3 Q. What had Chevron threatened to sue Burford about prior to
4 the execution of this settlement agreement?

5 A. I'm not sure that I have a particularized answer.

6 Q. Well, you testified that you had an understanding that
7 Chevron threatened to sue Burford prior to the execution of
8 this agreement. What is the nature of your understanding?

9 A. As I said, I am not sure that it goes beyond what I just
10 told you into anything that is more particularized.

11 Q. Had Burford thought that it had done something wrong prior
12 to the entry of the settlement agreement that it had to resolve
13 by entering into it?

14 A. No.

15 Q. Had Chevron made a formal notice or demand of Burford prior
16 to entering into the settlement agreement?

17 A. Again, I'm not entirely sure what those words mean in this
18 context, Mr. Gomez.

19 Q. Mr. Bogart, what I am trying to understand is, if Burford
20 is settling with Chevron, what exactly is it settling through
21 this agreement?

22 A. Well, as the agreement makes plain, any potential claim
23 that Chevron might have been able to bring against Burford.

24 Q. At the time, what claim did Burford believe Chevron might
25 have been able to bring that would -- at the time, what claim

DAG8CHE3

Bogart - cross

1 did Burford believe Chevron might have been able to bring
2 against it?

3 MR. MASTRO: Objection to form, your Honor.

4 THE COURT: Overruled.

5 A. Well, Burford had already been named not as a party, but
6 had been named in the complaint in this action.

7 Q. So did Burford fear that it would be sued as a
8 co-conspirator or that it would be added as a named
9 co-conspirator to the action?

10 A. Again, you're taking me into a world of speculation, and I
11 have already told you that we weren't engaged here in
12 particularized sort of statement of claim level discussions.
13 So if you want me to speculate, I suppose I can.

14 MR. MASTRO: Objection to speculating, your Honor.

15 MR. GOMEZ: May I have Exhibit 587, please,
16 defendants'.

17 Your Honor, we have the exhibits for the cross. So I
18 think I would like to just hand the binder over so that all of
19 them will be in front of the witness.

20 THE COURT: That's fine.

21 If you have one for me, it will be helpful too, but I
22 guess not.

23 MR. GOMEZ: Your Honor, I can hand you individually.

24 THE COURT: Thank you.

25 MR. MASTRO: Why don't you give the judge the binder

DAG8CHE3

Bogart - cross

1 and you can give me individually.

2 Q. Mr. Bogart, would you please turn to the tab marked
3 Defendants' Exhibit 587, please?

4 Sir, is this a declaration that you signed on April
5 17th of this year?

6 A. Yes, it appears to be.

7 Q. If you turn to page 17 of the document. The number is at
8 the bottom of the document. Is that your signature that
9 appears on that page?

10 A. There are two of them in here both marked 3687. Is that
11 what you're referring to? Are they the same? I guess so.

12 Q. Exhibit 0587.

13 If you will look at the defendants' exhibit
14 designation at the bottom right-hand corner.

15 A. I see it, and yes, that is my signature.

16 Q. This is the declaration that you referred to in your direct
17 examination that you had prepared, sir?

18 A. That's correct.

19 MR. GOMEZ: I would like to enter this into evidence,
20 please.

21 THE COURT: Any objection?

22 MR. MASTRO: No objection.

23 THE COURT: Defendants' 587 is received.

24 (Defendants' Exhibit 587 received in evidence)

25 Q. Mr. Bogart, did Chevron see a draft of this declaration

DAG8CHE3

Bogart - cross

1 before agreeing to settle with Burford?

2 A. Yes.

3 Q. How far in advance did Chevron see a draft of this
4 declaration before agreeing to settle with Burford?

5 A. The declaration and the settlement agreement were roughly
6 contemporaneous.

7 Q. Did Chevron require you to make any changes to this
8 declaration as a condition to agreeing to settle with Burford?

9 A. No.

10 Q. Was it your understanding that the settlement was
11 contingent on you signing a particular declaration?

12 A. A particular declaration, no.

13 Q. Was it your understanding that the settlement with Burford
14 was contingent upon you signing the declaration where you
15 asserted that Burford was misled?

16 MR. MASTRO: Objection to form.

17 THE COURT: I'm sorry. There was an objection?

18 MR. MASTRO: To the form.

19 THE COURT: Sustained.

20 Q. Mr. Bogart, were you specifically told by Chevron that
21 Chevron would settle with Burford no matter what your
22 declaration said?

23 A. No.

24 Q. Sir, your testimony in this case, if I understand it
25 correctly, is that it became clear to Burford that it was

DAG8CHE3

Bogart - cross

1 involved in a fraud as a result of three events. One was a
2 January 27, 2011 telephone call from Mr. James Tyrrell, second
3 was the February 1, 2011 filing of this RICO complaint in this
4 action, and the third was this Court's March 7, 2011 decision
5 to enter into a preliminary injunction. Do I understand your
6 testimony correctly, sir?

7 MR. MASTRO: Objection. It mischaracterizes his
8 testimony. Compound question.

9 THE COURT: Sustained.

10 Q. Mr. Bogart, is it your testimony that Burford made a
11 determination or came to the conclusion that it had been misled
12 as a result of this Court's March 7, 2011 decision to enter a
13 preliminary injunction in this case?

14 A. There is no --

15 MR. MASTRO: Objection to form, your Honor.

16 THE COURT: Overruled.

17 A. There is no question that this Court's lengthy opinion in
18 connection with the grant of the preliminary injunction
19 certainly informed Burford's thinking, yes.

20 Q. Is it your testimony that as of March 7, 2011, Burford
21 entertained the belief that it had been misled as of that date?

22 A. Yes.

23 Q. Is it your testimony that as of that date, Burford made the
24 determination that it can no longer proceed funding the
25 litigation?

DAG8CHE3

Bogart - cross

1 A. I don't know that Burford had made the latter determination
2 at that point.

3 Q. Mr. Bogart, I would like to direct your attention to
4 Defendants' Exhibit 482. Please take a look at that.

5 MR. GOMEZ: For the record, Defendants' Exhibit 482
6 has a cover sheet. The actual exhibit is the second and third
7 pages, with the Bates number BUR 005754757548.

8 Q. Mr. Bogart, does this exhibit contain an e-mail chain from
9 you to Aviva Will, dated Thursday, June 2, 2011, at 9:34 p.m.?

10 A. Yes, it appears to be.

11 Q. Incorporated in that e-mail is there a message forwarded
12 from you to a Herbert Lichtman, dated Thursday, June 2, 2011,
13 at 1:57 p.m.?

14 A. 1:27 p.m., but yes, it appears to be.

15 Q. 1:27 p.m. Mr. Bogart did you send that 1:27 p.m. e-mail to
16 Mr. Herbert Lichtman?

17 A. I believe I did.

18 MR. GOMEZ: At this time, I would like to move Exhibit
19 482 into evidence.

20 MR. MASTRO: No objection, your Honor.

21 THE COURT: Received.

22 (Defendants' Exhibit 482 received in evidence)

23 Q. Mr. Bogart, looking at this e-mail, were you advising
24 Mr. Lichtman to remain involved in the -- withdraw the
25 question.

DAG8CHE3

Bogart - cross

1 Mr. Bogart, with this e-mail, were you reprimanding
2 Mr. Lichtman for his inclination to cease his involvement with
3 this case on June 2, 2011?

4 MR. MASTRO: Objection to the form. The document
5 speaks for itself.

6 THE COURT: Sustained.

7 Q. What was your purpose in sending this e-mail to
8 Mr. Lichtman?

9 A. I was responding, as it says in the first paragraph, to a
10 communication that I had received from him.

11 Q. In this e-mail, I would like you to explain what you mean
12 by a particular sentence. I will direct your attention to the
13 paragraph that begins, "I also think we need to move on." Do
14 you see the paragraph that I am talking about?

15 A. I do.

16 Q. In the middle of that paragraph, you write, "We told you
17 about the deterioration of the relationship, about the
18 shenanigans with Ernie and so forth."

19 What did you mean by the deterioration of the
20 relationship, sir, when you wrote this e-mail?

21 A. My recollection is that it carries on from the preceding
22 sentence and it refers to a deterioration of the relationship
23 with the plaintiffs.

24 Q. And when you write about the shenanigans with Ernie, what
25 are you referring to, sir?

DAG8CHE3

Bogart - cross

1 A. I believe I was referring to the shenanigans relating to
2 the arrival of Mr. Ernie Getto to Burford.

3 Q. What specifically happened that you were referencing when
4 Ernie Getto arrived at Burford?

5 A. Sitting here today I am not sure that I have a crisp
6 recollection of what I meant in this particular e-mail, but
7 from the context, I am assuming that it relates to your
8 client's complaint to us.

9 MR. MASTRO: Your Honor, if he doesn't have a
10 recollection from the e-mail, he would be speculating.

11 THE COURT: The question is what you remember, sir.
12 You either remember or you don't remember.

13 What is your best recollection, if any?

14 A. I think I had finished.

15 MR. GOMEZ: Can I have the last answer read back,
16 please?

17 (Record read)

18 Q. What complaint are you referring to, sir?

19 A. There was a complaint about the arrival of Mr. Getto made
20 by your client to Burford.

21 Q. What was the nature of that complaint?

22 A. Your clients were unhappy that Mr. Getto, who had formerly
23 been a partner at Latham & Watkins, had joined Burford.

24 Q. When Ernie Getto was a partner at Latham & Watkins, did he
25 represent Chevron Corporation?

DAG8CHE3

Bogart - cross

1 A. I believe they were one of his clients, yes.

2 Q. Didn't his joining Burford pose a potential conflict of
3 interest in view of the fact that Burford was funding
4 litigation where Chevron was an adverse party?

5 MR. MASTRO: Objection.

6 THE COURT: Sustained.

7 Q. Mr. Bogart, when you sent this e-mail on June 2, 2011, the
8 Court in this case had already issued its decision of a
9 preliminary injunction, and you indicate to Mr. Lichtman that
10 you offer to sell Burford's interests to him, is that correct?

11 MR. MASTRO: Objection to form, your Honor.

12 THE COURT: Sustained. It either says it or it
13 doesn't.

14 Q. Why were you offering to sell Burford's interest in a case
15 that at the time you believed was a subject of fraud?

16 A. I suppose the answer to at least the first part of your
17 question is that obviously the e-mail is conveying some
18 unhappiness on the part of a coinvestor, and one of the ways to
19 try and solve unhappiness with coinvestors is to not be
20 coinvestors anymore one way or the other.

21 Q. On or about the time that you sent this e-mail to Herbert
22 Lichtman, did you communicate to him that you believed you had
23 been misled into furthering a fraud with funding?

24 A. I very rarely had communications with Mr. Lichtman. So I
25 would think probably not.

DAG8CHE3

Bogart - cross

1 Q. He was an investor in the same case, wasn't he?

2 A. Mr. Lichtman had, through his firm, become an equity
3 investor in Treca.

4 Q. And if Burford felt misled, don't you think Burford had an
5 obligation to inform Mr. Lichtman about the basis for that
6 sentiment?

7 A. Well, as you can see from the e-mail, there is no
8 suggestion that Burford is not communicating actively with
9 Mr. Lichtman. And I believe there was such active
10 communication. It was simply not through me.

11 Q. Who do you believe was engaging in that kind of
12 communication?

13 A. Principally, Jon Molot of Burford.

14 Q. You have personal knowledge of what Jon Molot at Burford
15 may have actually told Herbert Lichtman regarding Burford's
16 belief that it had been misled to fund a fraudulent lawsuit?

17 A. I don't have personal knowledge, no.

18 Q. Sir, let me show you another document. I direct your
19 attention to Defendants' Exhibit 483. 483 is composed of two
20 pages. The second page seems to be a series of notations
21 handwritten with the Bates number BUR 0004496.

22 Do you see that document, Mr. Bogart?

23 A. I do.

24 Q. Sir, what is this document?

25 A. I believe these are my handwritten notes in preparation for

DAG8CHE3

Bogart - cross

1 my giving a briefing to the board of directors of Burford
2 Capital.

3 Q. Do you know approximately what date you made these notes?

4 A. I would think shortly before the middle of February,
5 probably February 12th or 13th of 2011.

6 Q. Do you recall whether you made these notes before or after
7 this Court entered a preliminary injunction in this case in
8 2011?

9 A. You will be able to correct my recollection from the
10 record. It was certainly before the Court's opinion on the
11 preliminary injunction.

12 THE COURT: Under the portion of the memorandum, Mr.
13 Bogart, that had something like a heading, wide range of
14 options, isn't there a reference to the decision of this court,
15 the preliminary injunction, and it then says, If lifted,
16 seriously consider further funding?

17 THE WITNESS: I wasn't attempting to split hairs, your
18 Honor. I honestly don't recall when the TRO became a
19 preliminary injunction. My recollection of these notes is that
20 they were made after this Court had granted the TRO, long
21 before this Court had issued its lengthy opinion on the
22 preliminary injunction. Whether the TRO had been converted to
23 a preliminary injunction before opinion I simply don't recall.

24 THE COURT: OK. Thank you.

25 THE WITNESS: But I am quite clear on the date of

DAG8CHE3

Bogart - cross

1 these notes.

2 Q. As of this point in time, Burford still considered
3 continuing its involvement in funding the Ecuadorian
4 litigation, isn't that correct, the enforcement of the
5 Ecuadorian litigation, isn't that correct, as of the time you
6 took these notes?

7 A. As I said, these are my outline as opposed to notes of a
8 conversation. But as the document says, I was listing for
9 discussion a wide range of options.

10 Q. One of those options was to, quote, ride it out, is that
11 what you note there, Kaplan and Second Circuit?

12 A. Yes. That note, the line that starts with S/T, which is my
13 nomenclature for short-term. So short-term ride out.

14 Q. When you referenced the notation "if lifted," you're
15 referring to the temporary restraining order, the preliminary
16 injunction in this action, sir?

17 A. Well, as I said, I don't recall if we were at the TRO or
18 the PI phase, but I presumed there would be an appeal of the PI
19 that ultimately would be entered, and that is what I was
20 referring to.

21 Q. Sir, under the terms of the settlement agreement, Burford
22 claims to have renounced its interest in the proceeds of the
23 Lago Agrio judgment, is that correct?

24 A. Yes, it is.

25 Q. How much did Burford invest in the litigation?

DAG8CHE3

Bogart - cross

1 A. \$4 million initially.

2 Q. Did Burford sell any or part of its interest before
3 renouncing in the settlement?

4 A. You will have to clarify your question for me, I am afraid.

5 Q. Burford invested \$4 million. Did Burford recoup that \$4
6 million from another investor before renouncing its interest by
7 way of the settlement agreement?

8 THE WITNESS: Shall I explain?

9 THE COURT: Just answer the question.

10 A. The answer to your question is that Burford invested \$4
11 million in early November 2010, sold equity in Treca, the
12 investment vehicle, for \$4 million in December 2010, and
13 entered into the settlement agreement you're discussing with
14 Chevron in 2013.

15 Q. When did it sell that equity in Treca?

16 A. In December 2010.

17 Q. Were there any other sales of equity between December 2010
18 and the settlement agreement with Chevron?

19 A. No.

20 THE COURT: Is the structure of this that Burford
21 invested \$4 million in Treca, Treca then invested \$4 million
22 with the plaintiffs. Is that correct so far?

23 THE WITNESS: That's correct so far.

24 THE COURT: And then the equity that Burford held in
25 Treca Burford sold to somebody else?

DAG8CHE3

Bogart - cross

1 THE WITNESS: No. Shall I explain?

2 THE COURT: Yes, please.

3 THE WITNESS: Treca had 15 shares of share capital
4 reflecting the total potential commitment in the funding
5 agreement of \$15 million. So at the time that Treca entered
6 into the funding agreement with the plaintiffs in October 2010,
7 Burford indirectly owned all 15 of those shares, and, indeed,
8 funded \$4 million through Treca to the Patton Boggs trust
9 account. A little more than a month later, Treca
10 sold -- Burford effectively sold four of those 15 shares in
11 Treca for \$4 million.

12 Q. Did Burford ever sell the remaining shares?

13 A. No, it did not.

14 THE COURT: So is the net of all this, from the
15 standpoint of Burford and its equity shareholders, that it's
16 not out-of-pocket a penny, and that what has been renounced is
17 the potential recovery in respect of the 11 of the 15 shares,
18 is that correct?

19 THE WITNESS: That is correct, other than the
20 significant fees, legal fees.

21 THE COURT: OK. Go ahead.

22 Q. Mr. Bogart, is it fair to say that Burford positions itself
23 as a financier of large commercial litigation matters, disputes
24 between corporations?

25 A. Yes.

DAG8CHE3

Bogart - cross

1 Q. And Burford's core clientele are general counsel in
2 corporations, is that correct?

3 A. Yes. But more significantly the law firms that represent
4 them.

5 Q. Is it fair to say that there was considerable debate at
6 Burford about whether the investment in the Ecuadorian
7 litigation was in line with the core business model of Burford?

8 A. There was discussion inside of Burford about disliking the
9 investment.

10 Q. Well, isn't it true, Mr. Bogart, that some of Burford's
11 core clientele expressed concern that Burford had invested in
12 this type of a case on the plaintiff's side?

13 MR. MASTRO: Objection. It calls for hearsay.

14 THE COURT: No. It's not offered for the truth of the
15 matter. It is offered for the fact that it was said if it was
16 said.

17 Answer the question, please.

18 A. Yes.

19 Q. Is it fair to say that some of Burford's partners had
20 concerns about continuing with this type of investment because
21 it might impair its ability to continue to attract clientele to
22 its core business?

23 MR. MASTRO: Your Honor, objection to form. It's not
24 clear what time period.

25 THE COURT: Overruled.

DAG8CHE3

Bogart - cross

1 A. No.

2 Q. Mr. Bogart, isn't it true that when Burford invested in the
3 Ecuadorian litigation, that it created some fallout among
4 certain law firms that were on the opposite side of the case?

5 A. To be honest, I don't know what you mean by fallout in that
6 context. At the time that Burford made the investment, it
7 wasn't known to the law firms on the other side of the case.

8 Q. I would like to direct your attention to Defendants'
9 Exhibit 501.

10 MR. GOMEZ: For the record, Defendants' Exhibit 501
11 has a cover sheet. The exhibit runs three pages. The second
12 and third page appear to be e-mails.

13 Q. Mr. Bogart, I am direct your attention to the top e-mail on
14 the second page. It is from a Doug Donsky to you, dated June
15 15, 2011, at 6:57 p.m.

16 Do you see that e-mail, sir?

17 A. I do.

18 Q. In the center of that e-mail it says, "Negatively,
19 Burford's decision to invest has created some painful fallout,
20 particularly among certain law firms on the opposite side of
21 the case."

22 Sir, did you receive this e-mail on or about June 15,
23 2011, at 6:57 p.m.?

24 A. I believe so.

25 Q. When you received this e-mail, did you read it?

DAG8CHE3

Bogart - cross

1 A. I assume so.

2 Q. When you read that sentence that I just read, what did you
3 understand Mr. Donsky to be referring to when he said
4 "Burford's decision to invest has created some painful
5 fallout"?

6 MR. MASTRO: Your Honor, this hasn't been offered into
7 evidence and he is asking him to comment on hearsay.

8 THE COURT: Sustained.

9 MR. GOMEZ: I ask that Defense Exhibit 501 be entered
10 into evidence.

11 MR. MASTRO: Not for the truth of the matter asserted
12 by some outside consultant. It's still hearsay, that
13 particular statement.

14 THE COURT: What is the purpose of the offer?

15 MR. GOMEZ: The purpose of the offer, your Honor, is
16 to prove that Mr. Bogart received this e-mail and was having
17 this conversation with Mr. Donsky.

18 THE COURT: How is that relevant?

19 MR. GOMEZ: It is relevant because the document speaks
20 to the state of mind of Burford at the time in question.

21 THE COURT: What is the state of mind of Burford
22 actually?

23 MR. GOMEZ: I am sorry?

24 THE COURT: What is the state of mind of a corporate
25 entity? Is it the sum total of all of the thoughts,

DAG8CHE3

Bogart - cross

1 contradictory and otherwise, of all the people who work for it?

2 MR. GOMEZ: I am trying to prove up the state of mind
3 of one of its chief executive officers.

4 THE COURT: Who is that?

5 MR. GOMEZ: Mr. Bogart.

6 THE COURT: So it's offered for Mr. Bogart's state of
7 mind?

8 MR. GOMEZ: Yes. His understanding of the situation
9 in which his company was --

10 THE COURT: If you're offering it to prove that
11 somebody said X, then I will receive it for the proposition
12 that somebody said X, but not for the truth of X. Do you
13 understand?

14 MR. GOMEZ: It's also offered for impeachment, your
15 Honor. Mr. Bogart testified that he did not know what painful
16 fallout meant.

17 THE COURT: That's not what he said.

18 MR. MASTRO: It's not what he testified to. He talked
19 about a more specific time frame and context. It's not a
20 proper impeachment.

21 THE COURT: Look, I am going to receive it simply as
22 an e-mail that was sent to this witness. So for that limited
23 purpose it's received, not for the truth of statements made by
24 anyone other than the witness.

25 (Defendants' Exhibit 501 received in evidence)

DAG8CHE3

Bogart - cross

1 BY MR. GOMEZ:

2 Q. Mr. Bogart, on or about June 15, 2011, the time of this
3 e-mail, were law firms complaining to Burford about its
4 investment in this litigation?

5 A. No.

6 Q. At the time of this e-mail, Mr. Bogart, did both Burford's
7 partners believe that public awareness of Burford's involvement
8 in this case would cause serious problems for the firm because
9 it was supporting the plaintiff's side of the litigation?

10 MR. MASTRO: Objection to form, your Honor.

11 THE COURT: It's compound and it calls for the state
12 of mind of a person other than the witness.

13 Q. Mr. Bogart, when did Ernie Getto arrive at Burford?

14 A. In January 2011.

15 Q. Was Mr. Ghetto in favor of Burford's investment in the
16 Ecuadorian litigation?

17 MR. MASTRO: Hearsay, your Honor.

18 THE COURT: I can't hear you.

19 MR. MASTRO: Objection. Hearsay.

20 THE COURT: Sustained.

21 Q. Do you know whether Mr. Getto objected to Burford remaining
22 involved in funding the Ecuadorian litigation when he arrived
23 at Burford?

24 MR. MASTRO: Same objection and to form.

25 THE COURT: Sustained.

DAG8CHE3

Bogart - cross

1 Look, obviously, Mr. Gomez, what is implicit in the
2 question is one of at least two different things. You could be
3 asking what the witness thinks somebody else thought. That's
4 one possibility, for the purpose of proving what that other
5 person thought. You could be asking for what, if anything,
6 that other person said to the witness. There are probably some
7 other permutations, but that's a good start.

8 Now, the analysis from an evidentiary standpoint is
9 very different depending on which of those two options you're
10 trying to get at, and I can't tell because I can't
11 psychoanalyze the question. So it would be really helpful if
12 you would try to formulate questions that would permit us all
13 to understand what you're trying to get at and how so that we
14 can all deal with what you're really trying to ask. I know
15 you're trying to do that. Let's go.

16 MR. GOMEZ: Thank you, your Honor.

17 BY MR. GOMEZ:

18 Q. Mr. Bogart, did Mr. Getto, on arrival at Burford, insist
19 that Burford cease funding the Ecuadorian litigation?

20 A. No.

21 Q. Did he ever communicate that to you?

22 A. I think I have already answered that.

23 Q. Do you know whether he communicated that to others in your
24 firm?

25 MR. MASTRO: Objection. Hearsay.

DAG8CHE3

Bogart - cross

1 THE COURT: No. It's calling for whether you ever
2 heard him communicate that to somebody else from your own ears.

3 A. I did not ever hear him communicate that to someone else.

4 Q. Was it your understanding that Mr. Getto was supposed to
5 stay on at Latham in some capacity after he became associated
6 with Burford?

7 A. No.

8 Q. Who was Jon Molot?

9 A. Jon Molot is Burford's chief investment officer.

10 Q. Did Jon Molot raise concerns about Ernie Getto joining
11 Burford?

12 A. Not that I recall sitting here.

13 Q. I would like to turn your attention to Exhibit 448. It's a
14 two page exhibit. The second page is an e-mail with Bates
15 number BUR 0056893, from Jon Molot to Christopher Bogart, dated
16 January 27, 2011, at 10:39 p.m.

17 Sir, did you receive this e-mail on or about this
18 time?

19 A. I assume so.

20 MR. GOMEZ: I would like to enter this into evidence.

21 MR. MASTRO: Once again, your Honor, we have no
22 objection as long as it's not for the truth of the matters
23 asserted.

24 THE COURT: What is the purpose of the offer?

25 MR. GOMEZ: The E-mail is offered to prove that the

DAG8CHE3

Bogart - cross

1 communication between Mr. Molot and Mr. Bogart took place.

2 THE COURT: And not the truth of the matter.

3 MR. GOMEZ: Right.

4 THE COURT: And to what is that relevant?

5 MR. GOMEZ: It's relevant to the fact that these
6 issues were being discussed on or about this time.

7 THE COURT: What is that relevant to?

8 MR. GOMEZ: There may have been other reasons why
9 Burford ceased funding the litigation as opposed to its sense
10 that it was misled in participating in the fraud.

11 THE COURT: Received not for the truth of the matter.

12 (Defendants' Exhibit 448 received in evidence)

13 THE COURT: Any more questions?

14 Q. Mr. Bogart, reading the e-mail, do you recall Mr. Molot
15 raising these kinds of concerns with you?

16 THE COURT: He testified he received the e-mail.

17 Next question.

18 Q. What was your reaction to Mr. Molot's expressed concerns?

19 A. You're going to have be a little more specific for me.
20 This is, as it says, a draft e-mail from Mr. Molot to Mr.
21 Getto.

22 Q. At the time, was Mr. Molot in favor of continuing the
23 funding of the Ecuadorian litigation?

24 MR. MASTRO: Objection. Relevance.

25 THE COURT: Sustained. It calls for the operation of

DAG8CHE3

Bogart - cross

1 someone else's mind as well.

2 Any more questions, Mr. Gomez?

3 MR. GOMEZ: Yes, your Honor. I am just trying to sort
4 through.

5 Q. Mr. Bogart, did anyone ever express to you that Chevron
6 ceased to provide work to Latham & Watkins in order to pressure
7 Burford to cease funding the Ecuadorian litigation?

8 MR. MASTRO: Objection to form and hearsay.

9 THE COURT: Sustained.

10 Let me back up. The purpose of the inquiry, the
11 purpose of the offer?

12 MR. GOMEZ: To establish an alternative reason for
13 Burford's decision to withdraw from funding the matter.

14 MR. MASTRO: Hearsay, your Honor. It's for the truth
15 of the matter asserted.

16 THE COURT: Well, look, no. I will take it for
17 non-hearsay purposes. It could be that whoever he buys his
18 newspaper from might have told him that Mayor Bloomberg would
19 be very happy if business stopped going to Latham & Watkins to
20 pressure his firm, and it's theoretically conceivable that he
21 might care. So we can play at this game for a long time, but I
22 will allow the question.

23 Answer the question, Mr. Bogart, please.

24 A. My recollection is the question was in a couple of parts.
25 Could I have it either read --

DAG8CHE3

Bogart - cross

1 THE COURT: Did anyone ever express to you that
2 Chevron stopped providing work to Latham for the purpose of
3 pressuring Burford to cease funding the Ecuadorian litigation?

4 THE WITNESS: I do not recall any such pressure being
5 applied on Burford through Latham.

6 (Continued on next page)
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DAGLCHE4

Bogart - cross

1 BY MR. GOMEZ:

2 Q. Mr. Bogart, weren't former Latham partners on the board at
3 Burford?

4 A. Burford's vice chairman is a former Latham partner, yes.

5 Q. Wasn't there a lunch meeting in which Latham partners met
6 with Burford executives and informed them that they were losing
7 work as a result of Burford's investment in this case?

8 A. It's entirely possible that was the case.

9 THE COURT: Do you know one way or the other?

10 THE WITNESS: I was not at any such meeting. I
11 only --

12 Q. Did anyone inform you that that happened, that
13 communication was made?

14 A. Yes, yes.

15 Q. In fact, wasn't the term used that Latham was being
16 blackballed by Chevron so that they could persuade Burford to
17 cease funding the litigation?

18 MR. MASTRO: Objection, hearsay, your Honor.

19 THE COURT: I'll allow it not for the truth, but for
20 the fact if it be so that he heard it.

21 THE WITNESS: I'm not trying to be difficult at all,
22 your Honor. The problem I'm having is the continued addition
23 of the purpose in his questions.

24 THE COURT: Well, you know, he's the master of the
25 question. Answer the question he asked you.

DAGLCHE4

Bogart - cross

1 THE WITNESS: No.

2 Q. I'd like to direct your attention to Defendant's Exhibit
3 492. 492 is an email from Christopher Bogart to Ernie Getto
4 dated January 27, 2011, 10:23 p.m., Bates number BUR0056012
5 through 014.

6 Mr. Bogart, does this exhibit contain an email that
7 you sent to Mr. Getto on or about this time?

8 A. It appears to, yes.

9 Q. Why did you send this email?

10 A. My recollection is that it was to provide some background
11 to Mr. Getto before he went and met with Chevron.

12 Q. And he was meeting precisely with general counsel at
13 Chevron, Hewitt Page; is that correct?

14 A. Among others, I believe, that's correct.

15 Q. That meeting took place on January 27, 2011?

16 A. That actually was my recollection until I'm seeing
17 10:20 p.m. stamp on the email.

18 Q. So what's your best recollection as to when that meeting
19 took place?

20 A. In this general time period.

21 Q. Is it customary for Burford's officers and directors to
22 meet with the general counsel of their client's litigation
23 adversaries in the middle of a case?

24 A. No.

25 Q. Was Patton Boggs or any of the attorneys handling the

DAGLCHE4

Bogart - cross

1 Ecuadorian litigation informed that Ernie Getto was meeting
2 with Chevron's general counsel Hewitt Pate in advance of that
3 meeting?

4 MR. MASTRO: Objection, relevance.

5 THE COURT: Overruled.

6 A. I cannot as I sit here today recall if Patton Boggs was
7 informed or not. I don't believe any other lawyers on the
8 plaintiff's side of the case would have been, no.

9 Q. In this exhibit, turning to the fourth page of this email,
10 you write as follows. Well, I'd like to direct your attention
11 to the last five bullets in this email, Mr. Bogart.

12 And my question to you is, sir, why were you providing
13 points, talking points to Mr. Ernie Getto regarding the
14 Ecuadorian litigation for him to have a meeting with Chevron
15 general counsel Hew Page?

16 A. As I already testified, Mr. Getto joined Burford in
17 January 2011 after he retired as a partner at Latham & Watkins.
18 He was not involved at Burford in the Chevron matter on any
19 substantive basis at all. But as I've also already testified,
20 both the plaintiffs and Chevron expressed to Burford some
21 degree of concern or unhappiness about Mr. Getto's arrival at
22 Burford given the pendency of this particular litigation.

23 These notes were to familiarize Mr. Getto with the
24 background to the matter so that he could go off and have an
25 intelligible conversation with Chevron, his former client, who

DAGLCHE4

Bogart - cross

1 had asked him to dinner to discuss the matter.

2 Q. So the purpose of the meeting was for general counsel Hew
3 Pate to discuss the Ecuadorian litigation with Mr. Ernie Getto?

4 MR. MASTRO: Objection, mischaracterizes the
5 testimony.

6 THE COURT: Sustained.

7 Q. Your last response you said discuss the matter. What
8 matter were you referring to in your last response?

9 THE COURT: He said discussed -- go ahead. I'll
10 withdraw that.

11 A. The Chevron Ecuador matter.

12 Q. So Ernie Getto and Chevron general counsel --

13 A. I believe I meant that. I'm sorry, I might need the
14 testimony read back. Without having the testimony in front of
15 me, I now do not recall if the matter meant the Chevron
16 litigation or the Mr. Getto's joining of Burford. It meant one
17 or the other of those things.

18 Q. Why would Mr. Getto need to discuss him joining Burford
19 with Chevron general counsel Hew Pate?

20 MR. MASTRO: Your Honor --

21 THE COURT: Sustained.

22 Look, Mr. Bogart, what you said was these notes were
23 to familiarize Mr. Getto with the background to the matter so
24 that he could go off and have an intelligible conversation.
25 What was the matter to which you referred?

DAGLCHE4

Bogart - cross

1 THE WITNESS: Thank you. The Chevron Ecuador matter.

2 THE COURT: Proceed, please.

3 Q. Reviewing these five bullet points, Mr. Bogart, was Burford
4 looking for a way out of funding this litigation on or about
5 January 27, 2011, because it understood that this investment
6 was going to have a detrimental impact on its core business?

7 MR. MASTRO: Objection to form, your Honor.

8 THE COURT: Overruled.

9 A. No. I've already told you what the purpose of the bullet
10 points were.

11 Q. Mr. Bogart, I'd like to direct your attention to
12 Defendant's Exhibit 493. This exhibit includes an email from
13 you to Mr. Randy Mastro. It's Bates No. BUR0071161 through
14 1164. The email, Mr. Bogart, that you sent to Mr. Mastro on or
15 about Friday, February 11, 2:47 p.m.

16 Do you see that, sir?

17 A. 12:47 p.m., I do.

18 Q. Did you send this email to Mr. Mastro on or about that
19 time?

20 A. I assume I did.

21 Q. Sir, can you explain why you, the CEO of an entity that was
22 funding the litigation on behalf of the Ecuadorians, was
23 congratulating the attorney of the other side for a superbly
24 executed campaign on February 11, 2011?

25 A. Sure. The necessary background is that I've known

DAGLCHE4

Bogart - cross

1 Mr. Mastro for a number of years. We've litigated against each
2 other in the past, and we've served together as directors of
3 the Legal Aid Society, among other encounters.

4 He had, as you can see here, just been named litigator
5 of the week due to his carriage of this matter. And I was
6 writing I suppose somewhat sardonically because on one hand he
7 had been named litigator of the week. On the other hand, part
8 of his achievement had been only a few days earlier naming my
9 company as, effectively, an unindicted coconspirator in a RICO
10 claim. So there was an underlying message in this email to him
11 as well.

12 MR. GOMEZ: Your Honor, I was wondering if we could
13 break for lunch so I could go over the notes that are the
14 remainder of my cross.

15 THE COURT: How much more do you have?

16 MR. GOMEZ: I probably have maybe 15, 20 minutes or
17 so.

18 THE COURT: Well, let's finish.

19 MR. GOMEZ: I could really use the time to organize my
20 questioning, your Honor. It would run more smoothly.

21 THE COURT: All right. We'll break here until
22 2 o'clock.

23 MR. GOMEZ: Thank you.

24 MR. MASTRO: Thank you, your Honor.

25 (Luncheon recess)

DAGLCHE4

Bogart - cross

AFTERNOON SESSION

2:06 p.m.

THE COURT: Good afternoon.

Let's continue, Mr. Gomez.

MR. GOMEZ: Your Honor, this needs to go back to the witness.

THE COURT: Pardon me?

MR. GOMEZ: This binder needs to go back before the witness.

THE WITNESS: Thank you.

MR. GOMEZ: Your Honor, the last document I was on was Defendant's Exhibit 493. I'd like to move that document into evidence at this time.

THE COURT: Received without objection.

(Defendant's Exhibit 493 received in evidence)

BY MR. GOMEZ:

Q. Mr. Bogart, you've testified that one of the issues that led you and your company, Burford, to believe that you had been misled was the revelation that the Kohn firm had a falling out with the Ecuadorian plaintiffs and was no longer involved in the case; isn't that correct?

A. Certainly, certainly the issues with respect to Mr. Kohn represent one of the areas in which we believe we were misled, yes.

Q. And isn't it true that you learned of those allegations at

DAGLCHE4

Bogart - cross

1 the end of 2010 and, more precisely, August of 2010?

2 A. No, I don't believe that's correct.

3 Q. When did you learn about the Kohn allegations?

4 A. I'm not sure as I sit here today that I can put a date on
5 it, but well, well after that date.

6 Q. Isn't it fair to say that after you learned about the Kohn
7 allegations, you had a discussion with Jim Tyrrell about the
8 possibility of Burford purchasing Kohn's interest?

9 A. There had been a number of discussions about the problem
10 created in the intercreditor agreement by the absence of
11 Mr. Kohn, so, yes.

12 Q. But my point, Mr. Bogart, is that after you learned that
13 the Kohn, that the Kohn firm felt it was misled, instead of you
14 questioning whether you should conduct a further examination of
15 due diligence of the matter, you instead inquired how you could
16 buy out the Kohn firm's interest; isn't that correct?

17 MR. MASTRO: Objection to form and argumentative.

18 THE COURT: Sustained on those grounds.

19 Q. Mr. Bogart, isn't it correct that after you learned that
20 the Kohn firm had felt misled, instead of you conducting
21 further due diligence, you instead inquired about how to
22 purchase the Kohn firm's interest?

23 MR. MASTRO: Same objection, your Honor.

24 THE COURT: Same question, same objection, same
25 ruling.

DAGLCHE4

Bogart - cross

1 Q. Did you or did you not, Mr. Bogart, inquire how to purchase
2 the Kohn firm's interest after the Kohn firm had renounced its
3 interest in the case?

4 MR. MASTRO: Objection, your Honor. Lack of
5 foundation and assumes facts not in evidence.

6 THE COURT: Sustained as to form.

7 Q. Mr. Bogart, I'm going to direct your attention to
8 Defendant's Exhibit 478, second page of this exhibit. It's an
9 email from you, sir, to James Tyrrell, dated Monday, January 3,
10 2011, at 10:43 a.m.

11 Do you see that, sir?

12 A. I do.

13 Q. Did you send this email to James Tyrrell on or about that
14 date?

15 A. I assume I did.

16 Q. Isn't it true you sent this email after you knew about
17 the -- that the Kohn firm had left the case because it had felt
18 it had been misled?

19 A. I would have to have my recollection refreshed about the
20 precise dates.

21 Q. Look at your witness statement, paragraphs 22 through 24,
22 please, sir. You testified that the particular letter that
23 Kohn sent to certain of the Lago Agrio plaintiffs'
24 representatives in August 2010 would have been material to
25 Burford.

DAGLCHE4

Bogart - cross

1 Does that refresh your recollection about when you
2 learned about the Kohn allegations, sir?

3 A. Well, it doesn't refresh my recollection. I've never said
4 that I didn't recall the materiality of the Kohn letter. My
5 testimony doesn't place a date on my knowledge of that letter.
6 I simply can't tell you if on January 3, 2011, I did or did not
7 know that.

8 MR. GOMEZ: Your Honor, I'd like to move Defendant's
9 Exhibit 478 into evidence.

10 MR. MASTRO: No objection, your Honor.

11 THE COURT: Received.

12 (Defendant's Exhibit 478 received in evidence)

13 Q. Mr. Bogart, in your testimony you have suggested that prior
14 to its investment in November of 2011, Burford believed the
15 issue with Cabrera was limited to ex parte contacts as opposed
16 to ghostwriting. I'm referring to your witness statement
17 paragraph 15.

18 MR. MASTRO: Objection to form.

19 THE COURT: Just a minute.

20 Q. You've also testified --

21 THE COURT: I said just a minute.

22 MR. GOMEZ: I'm sorry, your Honor.

23 THE COURT: Overruled.

24 Q. And you've also testified, sir, I'm referring to witness
25 statement paragraph 38, that Donziger --

DAGLCHE4

Bogart - cross

1 A. I haven't answered the prior question.

2 THE COURT: I'm sorry?

3 THE WITNESS: I haven't answered the prior question.

4 MR. GOMEZ: I haven't finished the question. I'm
5 sorry.

6 THE COURT: Maybe you ought to start all over again.
7 How is that.

8 Q. Mr. Bogart, is it true that you have suggested that prior
9 to its investment in November 2011, Burford believed the issue
10 with Cabrera was limited to ex parte contacts as opposed to
11 ghostwriting? I'm referring to paragraph 15.

12 THE COURT: Look, this is not helping much. Are you
13 asking him whether that's what paragraph 15 says, or are you
14 asking him to buy into your characterization of what
15 paragraph 15 says, or are you asking him about the facts?

16 Q. I'm asking prior to your investment in November of 2011,
17 did Burford believe that the issue with Cabrera was limited to
18 ex parte contacts as opposed to ghostwriting?

19 THE COURT: I'm amending the question to ask whether
20 that's what you believed, but otherwise answer it.

21 A. So, first of all, it's November 2010, not November 2011.
22 With that amendment, certainly at the time that Burford made
23 the investment we believed that whatever the Cabrera issue was,
24 it pertained only to limited and permissible contacts, that's
25 right.

DAGLCHE4

Bogart - cross

1 MR. GOMEZ: Your Honor, Mr. Bogart has submitted
2 direct testimony where he is speaking on behalf of Burford.
3 However, he is not permitted to testify -- he's only permitted
4 to testify as to his own beliefs. I would submit, your Honor,
5 that if Mr. Bogart has submitted a declaration or direct
6 testimony that tends to describe the knowledge of the entity
7 Burford as opposed to just his own knowledge, that he also be
8 allowed to testify here today as almost akin to a 30(b)(6),
9 that is, representing the knowledge of the entity.

10 THE COURT: Except Rule 30(b)(6) has nothing to do
11 with trials. And we've already had discussions for a
12 considerable period of time, both yesterday and today, about
13 the fact that the way in which the witness statements were
14 drafted were such that they included all sorts of stuff that
15 would not be admissible in evidence -- and we just had this
16 discussion before the lunch break -- stuff of which there's no
17 personal knowledge and the like.

18 Now, you know, I suppose you could get somebody in
19 here whose job is to clean rest rooms at General Motors and ask
20 him questions about what General Motors believed on a
21 particular day and that's not useful. And you could get the
22 CEO in and that wouldn't be any more useful because the CEO
23 doesn't necessarily know what the executive vice president knew
24 or what the person in charge of research on positraction axles
25 is or whatever My Cousin Vinny was talking about in the movie.

DAGLCHE4

Bogart - cross

1 The idea is we are supposed to try this case on the
2 basis of competent evidence and we're going to do that.

3 Q. Mr. Bogart, do you believe that Donziger and Patton Boggs
4 misled you by suggesting that ex parte meetings and
5 communications are lawful in Ecuador?

6 A. I certainly believe that we were misled about the quantity
7 and nature of the ex parte communications that appear to have
8 occurred here.

9 Q. What reason do you have to believe that Ecuadorian law
10 prohibits communications or meeting ex parte with experts?

11 MR. MASTRO: Mischaracterizes the testimony, your
12 Honor.

13 THE COURT: Sustained.

14 Q. Why do you have the belief that you were misled as a result
15 of the quantity and nature of the ex parte communications at
16 issue?

17 A. Well, for a variety of reasons, I believe all of which are
18 in the record of this proceeding, starting with the fact that
19 Mr. Donziger altered substantially the story he gave about
20 Cabrera between the time he took our capital and the time that
21 this matter came to court.

22 Q. Mr. Bogart are you aware -- who is Frank Schwitter,
23 Mr. Bogart?

24 A. Frank Schwitter, to the best of my knowledge, was a
25 consultant or employee of a firm called Burford Advisors, which

DAGLCHE4

Bogart - cross

1 is not related to Burford Capital.

2 Q. Mr. Schwitter wasn't Burford's CEO in the months leading up
3 to Burford's Ecuador investment?

4 A. No, I was.

5 Q. CFO, I'm sorry.

6 A. No. As I said, Mr. Schwitter was with a firm called
7 Burford Advisors, which was unrelated to Burford Capital.

8 The similarity in names stems merely from the fact
9 that Mr. Seidel named all of his various ventures with a
10 Burford moniker. But Mr. Schwitter was not in any way involved
11 in Burford Capital's consideration of this matter.

12 Q. Do you have any knowledge of an email by Mr. Schwitter
13 where he commented on the Cabrera report, in particular in
14 Annex T, and opined that work was probably done by a firm
15 called Stratus?

16 A. I do not.

17 Q. Sir, with reference to paragraph 16 of your testimony, you
18 testified that Burford invested despite concerns about the
19 Cabrera allegations. I withdraw that.

20 Do you believe, sir, that Burford invested despite
21 concerns about the Cabrera allegations largely because it
22 believed in Patton Boggs's approach of submitting supplemental
23 expert reports concerning damages to the Ecuadorian court?

24 MR. MASTRO: Objection to form, your Honor.

25 THE COURT: Sustained as to form.

DAGLCHE4

Bogart - cross

1 Q. Did Burford believe that the submission of supplemental
2 experts to the Ecuadorian court cured any of the allegations
3 with respect to the Cabrera report at the time it made its
4 investment?

5 MR. MASTRO: Objection to form, your Honor.

6 THE COURT: Sustained as to form.

7 As far as I can tell, Mr. Gomez, what you're doing at
8 the moment is you're taking paragraph 16 of the declaration,
9 which says sort of what I gather your questions are trying to
10 get the witness to admit and you're repackaging them in
11 language that you would rather have it stated in and trying to
12 get the witness to buy into it and it's not a useful exercise.
13 If I'm wrong about that, maybe you can clarify it for me.

14 Q. Mr. Bogart, what is the basis for your allegation that the
15 Invictus memo contains false information?

16 A. I think the short answer is that the disclosure of facts
17 subsequent to the memo being written have clearly demonstrated
18 that a number of facts in it were inaccurate or incomplete.

19 Q. Which particular facts are you referring to?

20 A. Well, I think we've just been discussing, for example, the
21 Cabrera report. And it is, you know, I think it has been made
22 clear through both my testimony and the documents in the case
23 it was unquestionably Burford -- Burford was relying
24 unquestionably on the representations from both Mr. Donziger
25 and Patton Boggs about a set of facts that turned out not to be

DAGLCHE4

Bogart - cross

1 true.

2 Q. What particular representation was Mr. Donziger saying that
3 Mr. Burford -- that Burford was relying upon with respect to
4 the Cabrera report, can you be more specific?

5 A. As I've already said that whatever contacts had occurred
6 with Cabrera, they were both permissible and limited.

7 Q. Which contacts?

8 A. Contact between Cabrera and what are colloquially called
9 the LAPs.

10 Q. Are you talking about any contacts or particular kinds of
11 contacts?

12 A. I'm talking generally about the body of contacts that I
13 understand to have occurred.

14 Q. Mr. Bogart, aren't you aware under Ecuadorian law it is
15 permissible to have ex parte contacts with the testifying
16 expert?

17 MR. MASTRO: Objection, your Honor.

18 THE COURT: Sustained.

19 Q. Do you have any reason to believe that under Ecuadorian
20 law --

21 THE COURT: Sustained. Move on. The witness's
22 position is abundantly clear.

23 Q. Directing your attention to paragraph 21 of your statement,
24 sir, you state you still "have not viewed more than a handful
25 of outtakes. Those that I have viewed caused me serious

DAGLCHE4

Bogart - cross

1 concerns and appeared to be inconsistent with the
2 representations in Invictus."

3 What particular Crude outtakes, sir, are inconsistent
4 with representations in the Invictus memo?

5 A. I'm not sure how I identify outtakes to you. I suppose I
6 have two sets of knowledge about the outtakes. One was a small
7 number of outtakes that were available on the American Lawyers
8 website; and then there were yet more, to my recollection,
9 outtakes that were exhibits to or described in this Court's
10 decision in March of 2011, if I'm not mistaken about the date.

11 And the Invictus memo was perfectly clear about the
12 outtakes. And it was a topic discussed at some length in that
13 memo in which we were told that the outtakes that were the
14 subject of what was at that point Chevron's allegations
15 represented a mere less than .1 percent of the total volume of
16 outtakes and, indeed, that the overall view of the outtakes was
17 that they supported the plaintiff's position and contradicted
18 Chevron's.

19 Q. You only viewed a handful of outtakes total; isn't that
20 correct?

21 A. Correct.

22 Q. So how could you verify that?

23 A. It's certainly the view that I have taken on the outtakes
24 that I viewed, and it's certainly the view expressed in other
25 materials in this litigation.

DAGLCHE4

Bogart - cross

1 Q. But, again, you've only viewed a handful of the outtakes;
2 is that correct?

3 THE COURT: How many times are you going to ask that,
4 Mr. Gomez?

5 Q. Any particular outtakes, Mr. Bogart, that you remember
6 seeing caused you serious concern?

7 A. I don't know --

8 MR. MASTRO: Asked and answered, your Honor.

9 THE COURT: Sustained.

10 (Continued on next page)

DAG8CHE5

Bogart - cross

1 MR. GOMEZ: I have misplaced one of my exhibits. Just
2 give me a moment.

3 Q. Mr. Bogart, I would like to direct your attention back to
4 Exhibit DX 490.

5 A. Just before you do, Mr. Gomez, if I could just make sure my
6 testimony is clear thinking back on one point.

7 You had asked me about a memorandum from
8 Mr. Schwitter, which I said that I had not seen. My answer was
9 intended to be that I had not seen it contemporaneously.

10 Q. Directing your attention back to Defendants' Exhibit 490,
11 this is an e-mail chain. The first e-mail in the chain is from
12 Ernie Getto to you, Mr. Bogart, dated Friday, July 8, 2011, at
13 12:11 p.m. Do you see that, sir?

14 A. I do.

15 Q. Sir, does that particular e-mail refresh your recollection
16 that you attended the lunch which is discussed in the e-mail
17 above this one on this exhibit?

18 A. My recollection was not in need of refreshing. I did not
19 attend the lunch.

20 Q. So when Mr. Getto sent this e-mail to you and writes,
21 "After our lunch the other --"

22 MR. MASTRO: It's not in evidence, your Honor.

23 THE COURT: Correct. Sustained.

24 MR. GOMEZ: Based on the prior testimony, your Honor,
25 I would like to move Defendants' Exhibit 490 into evidence.

DAG8CHE5

Bogart - cross

1 MR. MASTRO: I object, your Honor. He says he neither
2 attended the lunch nor should it be admitted for any purpose,
3 certainly not for the truth of it. He is not on the e-mail
4 chain.

5 THE COURT: Well, he is on part of it.

6 MR. MASTRO: Just part of it, your Honor.

7 THE COURT: What is the purpose of the offer?

8 MR. GOMEZ: This exhibit, your Honor, was discussed
9 previously when Mr. Bogart was answering questions regarding
10 whether Latham was blackballed due to Burford.

11 THE COURT: How does that illuminate the purpose for
12 which it is now offered?

13 I mean, it all or substantially all seems to be
14 hearsay offered to prove the truth of the matters asserted and
15 of dubious relevance to this lawsuit. But maybe I am missing
16 something. I invite you to help me.

17 MR. GOMEZ: Your Honor, Mr. Bogart has testified that
18 he was aware of some discussions brought on that Latham
19 partners were concerned that they may be losing business from
20 Chevron as a result of Burford's involvement in the case. This
21 e-mail, the top of which confirms that those kind of concerns
22 were being voiced on or around September to July 9, 2011.

23 MR. MASTRO: The e-mail he is trying to get in on the
24 truth of the matter asserted, he didn't get, he didn't go to
25 the lunch, and there is no impeachment involved here because it

DAG8CHE5

Bogart - cross

1 doesn't contradict him. It's irrelevant.

2 THE COURT: Sustained.

3 BY MR. GOMEZ:

4 Q. Mr. Bogart, turning your attention back to Defendants'
5 Exhibit 492. This is the e-mail where you identified some
6 talking points for Mr. Ernie Getto's meeting with Chevron's
7 general counsel Hew Pate.

8 Mr. Bogart, isn't it correct that at this time, when
9 you sent this to Mr. Getto, you were of the opinion that
10 Burford would be better off not being involved in the
11 Ecuadorian litigation, isn't that correct?

12 A. Even if that is so, we were.

13 Q. You were looking for a way out at this time, weren't you,
14 as a result of that sentiment, isn't that correct?

15 A. Are you relating to this document or are you asking me a
16 general question?

17 Q. I am asking you a general question.

18 A. So at the end of January 2011, I think we probably reached
19 the point in this investment by which we would have been
20 happier not to have made it, but we had made it. And we had
21 not yet reached any conclusion about what to do about it, in
22 part because we had not yet discovered a variety of the
23 evidence that has now come to light.

24 Q. Isn't it also true that you would have relinquished your
25 interest at that time if you could have figured out a way to

DAG8CHE5

Bogart - cross

1 deal with the fact that Patton Boggs would have been left
2 without funding?

3 MR. MASTRO: Your Honor, that's a subjunctive improper
4 question. I object to the form.

5 THE COURT: It reminds me of one of my favorite
6 objections to a question at a deposition asked in similar form.
7 Objection. If you had wheels, would you be a bicycle?

8 The objection is sustained.

9 Q. Mr. Bogart, was the reason that Ernie Getto was meeting
10 with Chevron was simply to relieve Chevron of any concerns
11 about the business that Burford had entered into, so that there
12 would be no fallout with large law firms like Gibson Dunn, and
13 figure out a way for Burford to disassociate itself from this
14 investment in a way that didn't look like it was abandoning
15 Patton Boggs?

16 MR. MASTRO: Objection to form. Argumentative.

17 THE COURT: Answer it if you can.

18 A. I think the fundamental answer to that is no, that was not
19 the purpose of Mr. Getto's conversation with Chevron.

20 Q. Was it something that Mr. Getto discussed with Mr. Pate
21 during that meeting?

22 THE COURT: That would depend if he were there,
23 wouldn't it, Mr. Gomez?

24 Q. Did Mr. Getto inform you that he discussed that with Mr.
25 Pate?

DAG8CHE5

Bogart - cross

1 THE COURT: Which is being offered for the truth of
2 the matter if such a statement was made. And Mr. Mastro is on
3 his feet and what is he going to say?

4 MR. MASTRO: Hearsay.

5 THE COURT: Sustained.

6 MR. GOMEZ: I have nothing further.

7 THE COURT: Thank you. Any redirect?

8 Mr. Friedman.

9 MR. MASTRO: He was just asking about DX 492, and that
10 actually never was moved into evidence. My notes reflect it
11 wasn't moved into evidence. I think it should be received.

12 THE COURT: Let's see if Mr. Friedman has any
13 questions, and then if you want to offer it on your redirect,
14 you may do so.

15 Any questions, Mr. Friedman.

16 MR. FRIEDMAN: Yes, your Honor, just quickly.

17 CROSS-EXAMINATION

18 BY MR. FRIEDMAN:

19 Q. Mr. Bogart, if I understood your testimony correctly, Treca
20 is a Cayman Island corporation?

21 A. That's correct.

22 Q. And it's Treca that provided the money to the plaintiff
23 lawyers?

24 A. Yes. Treca was the party to the investment agreement and
25 the funding would have passed from Treca to Patton Boggs' trust

DAG8CHE5

Bogart - cross

1 account.

2 MR. FRIEDMAN: That's all I have. Thank you.

3 THE COURT: Redirect.

4 MR. MASTRO: Thank you, your Honor.

5 I do think the Court should receive DX 492.

6 THE COURT: Any objection to 492?

7 MR. GOMEZ: No, your Honor.

8 THE COURT: Mr. Friedman?

9 MR. FRIEDMAN: Again, I guess not for the truth, your
10 Honor, but I guess I would ask what it is offered for.

11 THE COURT: What is it offered for, Mr. Mastro?

12 MR. MASTRO: This is from Mr. Bogart, and he is saying
13 himself on the last page, Burford is obviously extremely
14 distressed by the Donziger proceedings and the facts that have
15 emerged, which are very different from the facts as we
16 understood them to be when we made the decision to fund.

17 So he was challenged on these things, and I think the
18 Court has a right to consider this evidence. He was questioned
19 on this document.

20 THE COURT: So it's offered as a prior consistent
21 statement.

22 MR. MASTRO: Correct, your Honor.

23 THE COURT: Any objection on that basis?

24 MR. FRIEDMAN: No, your Honor.

25 THE COURT: Received on that basis.

DAG8CHE5

Bogart - cross

(Defendants' Exhibit 492 received in evidence)

THE COURT: Any other redirect?

MR. MASTRO: I wanted the record to be clear. When we moved the declaration, we also moved the 12 exhibits to the Bogart declaration. Of course, they will have the opportunity, the other side, to exchange with us on whether they have any objections.

Your Honor, just a few questions.

THE COURT: Before you do that, let me just check my notes.

The exhibits listed in Plaintiff's Exhibit 3100A are received on the same basis as the exhibits to the previous witness statement, Plaintiff's Exhibit 3000, on the same procedure we outlined yesterday.

Go ahead.

MR. MASTRO: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. MASTRO:

Q. Mr. Bogart, just to be clear, when was it that you became aware of Joe Cohen's August 2010 letter, before or after Burford funded in this case in November 2010?

A. After.

Q. Sir, directing your attention to Defendants' Exhibit 483. Those were handwritten notes you made, and I believe that you testified you made them on February 12 or 13. Can you please

DAG8CHE5

Bogart - redirect

1 explain to -- February 12 or 13, 2011.

2 Can you please explain to the Court how it is that you
3 know when you made these notes, these handwritten notes?

4 A. As I testified previously, these were notes to myself,
5 essentially an outline for my briefing to the Burford Capital
6 board of directors about this matter. The Burford board only
7 meets quarterly. The relevant quarterly meeting was the 14th
8 through the 16th of February 2011. The board actually had a
9 specific discussion session around the Chevron matter on the
10 first day of that three day period on the 14th, and so these
11 notes were made shortly before the weekend. That was a Monday,
12 the 14th. They were made on the weekend when I was preparing
13 for the board meeting, and they of course were made after the
14 issuance of at least the TRO action, so it's quite easy for me
15 to date them with specificity.

16 Q. Did you do anything else to go back and confirm that these
17 notes were in fact made on February 12 and 13, 2011?

18 A. I didn't really need to, but these are notes from a spiral
19 bound hardcover notebook, and the pages make it clear that that
20 is the correct date range for them.

21 Q. Is that spiral notebook that you just described a record
22 that you make at or near the time you are documenting
23 particular information?

24 A. Yes. Everything in there would be contemporaneous. As I
25 said in my declaration, I am not an inveterate note taker, but

DAG8CHE5

Bogart - redirect

1 when I do make notes that I am preserving in my notebooks, they
2 are contemporaneous.

3 Q. Is that the kind of record that you keep in the regular
4 course of regular conducted activity of Burford?

5 A. It is.

6 Q. You make it a regular practice if you think something is
7 important to put in your spiral notebook in the regular course
8 of your duties?

9 A. When I make that election, yes, it's clearly in the regular
10 course of my duties.

11 Q. Can I refer you, please, Mr. Bogart, to Plaintiff's Exhibit
12 1473.

13 THE COURT: Are you offering these it or not?

14 MR. MASTRO: I am happy to have them received. They
15 were not offered by the other side.

16 THE COURT: I understand that. You just laid a
17 business records foundation. I was wondering why, whether it
18 was just kind of CLE or something.

19 MR. MASTRO: I am always trying to do it right. I was
20 going to offer another piece from the notebook.

21 THE COURT: I can wait.

22 MR. MASTRO: Please take it now.

23 THE COURT: Is there any objection to 483?

24 MR. GOMEZ: No, your Honor.

25 MR. FRIEDMAN: No, your Honor.

DAG8CHE5

Bogart - redirect

1 THE COURT: Received.

2 (Defendants' Exhibit 483 received in evidence)

3 MR. MASTRO: May I approach the witness, your Honor?

4 THE COURT: Certainly.

5 Q. Mr. Bogart, I have just handed you Plaintiff's Exhibit 1473
6 that we already offered into evidence in connection with your
7 declaration and you describe in paragraph 29. Do you recall
8 that?

9 A. I do.

10 Q. The date on these handwritten notes is January 27, 2011?

11 A. Yes.

12 Q. Are these notes a conversation you had with James Tyrrell
13 on January 27, 2011?

14 A. Yes.

15 Q. Were these also kept by you in the same notebook you
16 described as you keep in the regular course of business?

17 A. Yes.

18 Q. Did you make these contemporaneously with the call, in
19 fact, while the call was occurring?

20 A. I did.

21 MR. MASTRO: Your Honor, this has already been
22 received subject to that objection, but I just wanted to lay
23 the proper foundation.

24 THE COURT: All right.

25 Q. Now, Mr. Bogart, you were asked some questions about

DAG8CHE5

Bogart - redirect

1 Defendants' Exhibit 482. That's a June 2, 2011 e-mail chain.
2 It includes communications between you and Mr. Lichtman.

3 I just wanted the record to be clear, can you please
4 explain to the Court your course of dealings with Mr. Lichtman
5 in connection with this Lago Agrio litigation investment, when
6 he invested and then what happened subsequently?

7 A. I can. It took some number of months in 2010 for this
8 investment to come together, between negotiation of the
9 economic terms and due diligence, and that culminated in the
10 fall of 2011 when we were really in active documentation.

11 It was clear fairly early on that Burford would not
12 have itself an appetite for a complete \$15 million of risk
13 here. That was purely a portfolio risk management matter. And
14 so we had begun talking to the Arena firm, even before the
15 investment was closed, about the possibility of them taking
16 part of the investment here. We had a prior ongoing
17 relationship with this firm. And so we were effectively
18 walking down the road with them, if you will.

19 We then, at the very end of October, closed the
20 funding agreement with the plaintiffs, using the Treca vehicle
21 that I have already described, and then within some weeks
22 thereafter, and certainly before the end of the year, we had
23 turned around and completed the share sale to Arena that I
24 described earlier.

25 Q. What, if anything, happened next in connection with

DAG8CHE5

Bogart - redirect

1 Mr. Lichtman, Arena's views of the investment in early 2011?

2 A. So in January 2011, we had reached the point in this matter
3 where quite a lot of disturbing information was coming out, and
4 the particular circumstances of the way the Arena investment
5 was structured wasn't intended to put all of the front end risk
6 on Arena and none on Burford. It was simply the way the
7 tranches flowed through the deal. And so we were, of course,
8 unhappy, as has been described in my declaration. Arena was
9 also anxious. And we, basically, for the sake of our
10 relationship with Arena, offered to reverse in January 2011
11 Arena's purchase of the four shares in Treca.

12 At that point, nobody quite knew what the future held
13 for us, but we were offering in January 2011 to reverse that
14 position so that effectively we would take the first tranche
15 and they would wait it out, as I said, for relationship
16 reasons.

17 We went down the road towards doing that, and it
18 looked as though, in fact, we were going to do that, until the
19 middle of February when we were just about to close that and
20 the judgment in Ecuador came out, which obviously caused a
21 change in Arena's calculus. And Arena decided that they would
22 not withdraw from having taken the first tranche, and so they
23 declined our offer at the time to rescind the equity purchase.
24 Q. What, if anything, happened between mid-February 2011 and
25 June 2011 when you had this e-mail exchange, in terms of

DAG8CHE5

Bogart - redirect

1 Mr. Lichtman's, Arena's perception of investment in Lago Agrio?
2 A. We had made it clear, when in February they elected to stay
3 in, we had made it clear that was the end of the opportunity to
4 exit, that it was effectively a one-time-only offer on our
5 part. However, as 2011 proceeded, the factual climate and
6 context around this matter frankly kept on getting worse and
7 more alarming. I think a fairly significant event was the
8 release of this Court's preliminary injunction decision. And
9 in the months that followed that, the litigation financing
10 aspect of this was frozen by the injunction so nobody needed to
11 do anything, but Mr. Lichtman, on behalf of his own investors,
12 was, like any sensible commercial player, trying to get us to
13 go back and be willing to do in the middle of the year what we
14 had been willing to do in January and February. And so this
15 communication was basically me saying to him, I'm sorry, we
16 were willing to do it, we have closed our books for the year,
17 you had your chance, and now you're where you are.

18 Q. Thank you, Mr. Bogart.

19 MR. MASTRO: No further questions, your Honor.

20 THE COURT: Thank you. The witness is excused.

21 You can leave all of that stuff there.

22 (Witness excused)

23 THE COURT: The next witness will be?

24 MR. BRODSKY: David Russell.

25 THE COURT: We will take our break now and not

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Bogart - redirect

1 interrupt him.

2 MR. BRODSKY: Before we call him, your Honor, we
3 wanted to make a motion in connection with his testimony,
4 whether you want to do it now or after.

5 THE COURT: Be seated, folks.

6 MR. BRODSKY: I know you have read the testimony of
7 Mr. Russell so I won't go into the specifics, but our motion is
8 to preclude cross-examination about the nature and extent of
9 contamination in Ecuador. Your Honor has already issued
10 rulings relating to litigating whether or not there is
11 contamination in Ecuador in this case.

12 We are offering Mr. Russell's testimony for multiple
13 purposes. The first purpose is that Mr. Russell, as he
14 testifies in his written statement, Mr. Donziger told him he
15 really wanted a big number for a cost estimate in 2003 for
16 purposes of pressuring Chevron. Regardless of whether or not
17 there is contamination in Ecuador, and Mr. Russell's evidence
18 to that effect, that testimony is relevant, overt acts in
19 furtherance of the RICO claims.

20 Second, Mr. Russell testifies he told Mr. Donziger
21 several times to stop using it, and Mr. Donziger continued to
22 use it, regardless, again, of whether there is contamination in
23 Ecuador and the nature and extent of it.

24 We bring this up because Mr. Russell did submit a
25 declaration earlier in the proceeding. That declaration was

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1 much more expansive and included evidence about the nature and
2 extent of the contamination, and that he didn't find
3 significant evidence of contamination or much of any. So we
4 wanted to be clear we are moving to preclude that kind of
5 examination before Mr. Russell takes the witness stand.

6 THE COURT: Ms. Littlepage.

7 MS. LITTLEPAGE: Good afternoon.

8 Judge, when I looked at the amended complaint of the
9 plaintiffs --

10 THE COURT: I am having trouble hearing you.

11 MS. LITTLEPAGE: When I looked at the amended
12 complaint from the plaintiffs to see what was alleged in the
13 complaint about Mr. Russell, those allegations start at
14 paragraph 101 of the amended complaint, and in paragraph 101,
15 the plaintiffs set out two false data points. They are going
16 through a litany of predicate acts, and when they get to Mr.
17 Russell, they say that there are two false data points relating
18 to Mr. Russell. The first of which, as alleged in the amended
19 complaint, is that the RICO defendants pressured Mr. Russell to
20 develop an exaggerated damages estimate.

21 So I am prepared to cross Mr. Russell on at least some
22 of the basic information of the contamination to rebut the
23 specific allegation in the complaint that his damages estimate
24 is exaggerated. If, in fact, it's valid based on the evidence,
25 it can't be exaggerated. And the word that they used about

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1 this false data point is the two points. Pressured, Mr.
2 Donziger pressured him to give an exaggerated damages estimate.
3 And so I was looking exactly at the allegations made by the
4 plaintiffs, and I was intending to rebut exactly those
5 allegations.

6 THE COURT: What data points are you talking about,
7 and where are they referred to in the complaint?

8 MS. LITTLEPAGE: Paragraph 101.

9 THE COURT: That data point was the damage estimate
10 itself.

11 MS. LITTLEPAGE: The claim that it's exaggerated. I
12 don't think they have an objection to Mr. Donziger getting a
13 damages estimate. I think that was required of him in the
14 litigation. Their allegation is that it is false because it
15 was exaggerated.

16 THE COURT: It's false because the man who gave it
17 said it's not the view he held.

18 MS. LITTLEPAGE: I think that's not actually his
19 testimony.

20 THE COURT: I'm sorry. I have read his testimony
21 quite a few times. His point is that he was down there. Mr.
22 Donziger told him he wanted a damage estimate. He had no
23 underlying data. Mr. Donziger said, assume A, B, C, D, E and
24 F. He then went into some empty hotel room, spent a day and a
25 half, and came back with a letter saying \$6 billion, based not

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1 on any underlying data at all, based upon what Mr. Donziger
2 told him to assume. Mr. Donziger then hands this to the world
3 and says, see, this is what the damages are.

4 It's as if I said to you, you know, assume that there
5 were no people on the island of Manhattan. Given that
6 assumption, how long would it take to fill it up with people to
7 get 6 million people here? Well, the problem is so obvious and
8 so obviously inherent. If the testimony is truthful, you're
9 not going to get to try the merits of the pollution claim on
10 the issue of whether it was exaggerated. The argument about
11 the exaggeration is that the man was handed assumptions and
12 made up a figure given the assumptions. And then told Mr.
13 Donziger not to use it anymore because it had no validity in
14 his view, and Mr. Donziger kept doing it.

15 MS. LITTLEPAGE: My point would be, if the assumptions
16 were, A, reasonable, and, B, proven to be truthful, then the
17 estimate can't be exaggerated. You can't have an exaggerated
18 estimate if it's based on -- first of all, it's based on two
19 things. It's based on actually going to the sites and looking
20 at the sites.

21 THE COURT: Suppose a big four accounting firm gives
22 an audit opinion that says that the financial statements
23 presented in a 10-K fairly present the condition of the
24 company, and that we have done an audit in accordance with
25 generally accepted accounting standards, and, in fact, there

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1 has been no audit. What they did is, in exchange for some
2 compensation, took data they were given by somebody and falsely
3 certified it.

4 Now, there may be an issue as to whether some
5 stockholder who relies on it can recover damages if it turns
6 out that by pure happenstance the numbers turn out to be right.
7 But for the auditor to go out and say, we have done this audit
8 and in our opinion this fairly presents the financial position
9 of the company, knowing full well that they have no basis for
10 it at all, that's fraudulent, isn't it?

11 MS. LITTLEPAGE: But that's not what happened here,
12 sir. Because what happened here is his own report says, I am
13 doing these estimates based on these assumptions. The entire
14 report was uploaded to the Web site. So anybody who wanted to
15 see what was underlying the \$6 billion number could go and see
16 the assumptions he had been given. And I think it is
17 commonplace in different parts of litigation, and remember this
18 is very early on in the litigation, that experts are asked to
19 make assumptions, and to offer opinions based on those
20 assumptions, and then the lawyer proves those assumptions.

21 THE COURT: Absolutely.

22 MS. LITTLEPAGE: I guess my question, your Honor, is,
23 if the claim is that this is a predicate act because the cost
24 estimate was exaggerated, then I believe I need to rebut that
25 claim of exaggeration, because it can't be a predicate act if

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1 the cost estimate was based on reasonable and valid assumptions
2 that in fact were true.

3 THE COURT: Mr. Brodsky.

4 MR. BRODSKY: Your Honor, again, the purpose of his
5 testimony is not to go into regardless of whether or not there
6 was contamination. He was told the purpose of this estimate
7 was to pressure Chevron into a settlement. He himself said,
8 this estimate that I gave is inaccurate, and I don't want you
9 to use it, cease and desist, stop using it. Mr. Donziger went
10 on to use it. Then he told him again and Mr. Donziger
11 continued to use it. Then he told him again and Mr. Donziger
12 continued to use it. That's his testimony, and that's true
13 regardless of whether or not these underlying assumptions that
14 Mr. Donziger threw at him about contamination are accurate or
15 inaccurate.

16 THE COURT: So the essence of your point is that Mr.
17 Donziger was misrepresenting the fact that this expert in fact
18 stood behind these projections, is that right?

19 MR. BRODSKY: Yes, your Honor.

20 MS. LITTLEPAGE: Your Honor, paragraph 101 of the
21 complaint raises both of those issues with an "and." It says,
22 We are bringing Mr. Russell here to prove two points. A, that
23 Mr. Donziger pressured him into giving an exaggerated damages
24 estimate. And that Mr. Donziger continued to use that estimate
25 after the cease and desist.

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1 I recognize the argument on the second part of the
2 "and." It's the first part of the "and" that I am dealing
3 with. Because the purpose of a plaintiff's lawyer in any case
4 is to get evidence to win your case. So asking Mr. Russell to
5 assume things in order to get a cost estimate, that your
6 ultimate goal was to use that cost estimate to win your case
7 for your clients, is the goal of every plaintiff's lawyer.
8 There is nothing fraudulent or criminal about that.

9 But if the claim here, if Chevron's claim here, as I
10 read it in their complaint, is that there is a predicate act
11 here because the cost estimate was exaggerated, then I am
12 asking for the opportunity to rebut that claim by showing that
13 the assumptions he was given were reasonable and ultimately
14 proven to be valid.

15 THE COURT: I will think about it over the break.

16 (Recess)

17 THE COURT: Anybody have anything they want to add to
18 the discussion before the break?

19 OK. Look, I am prepared to go this far at this
20 moment, and we will see where it goes from here. There is at
21 least one statement in Mr. Russell's witness statement, there
22 may be others, I am referring to paragraph 11, in which he said
23 that within a year of working for Donziger, I came to learn
24 that my cost estimate was wildly inaccurate and had no
25 scientific data to back it up, and he goes on in that vein a

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1 little bit. And I am sure there is at least one other
2 reference.

3 There is in doubt in my mind that the defendants have
4 the right to attempt to impeach the veracity of that testimony
5 in an appropriate way, and that will be permitted. Where we go
6 from there remains to be seen, and it will depend on questions
7 and what evidence is offered, and when it's offered and through
8 whom conceivably.

9 If the parties would like to brief this matter, it
10 might well be helpful. And if this is going to come up
11 tomorrow further, it would be helpful to have it by the
12 morning. If it's not going to come up until next week, then I
13 would like it by Friday.

14 OK. Let's proceed.

15 MR. BRODSKY: Plaintiffs call David Russell.

16 DAVID LLOYD RUSSELL,

17 called as a witness by the plaintiffs,

18 having been duly sworn, testified as follows:

19 THE DEPUTY CLERK: State your name and spell your last
20 name for the record.

21 THE WITNESS: My name is David Lloyd Russell,
22 R-U-S-S-E-L-L.

23 THE COURT: Proceed, Mr. Brodsky.

24 DIRECT EXAMINATION

25 BY MR. BRODSKY:

DAG8CHE5

Russell - direct

1 Q. Mr. Russell, did you submit a declaration in connection
2 with this case, in this trial?

3 A. Yes, I did.

4 MR. BRODSKY: May I approach, your Honor?

5 THE COURT: You may.

6 Q. Mr. Russell, I am showing you what is marked as Plaintiff's
7 Exhibit 3200 for identification. Would you take a moment to
8 look at that, please?

9 MR. BRODSKY: For the record, your Honor, it's 19
10 pages, under a heading declaration of David Russell, with 24
11 pages behind it of demonstrative exhibits.

12 Q. Have you had a chance to look at it, Mr. Russell?

13 A. I have.

14 Q. Do you recognize it?

15 A. Yes, I do.

16 Q. Is that your declaration?

17 A. Yes, it is.

18 Q. How do you recognize that as your declaration?

19 A. My signature is on the, I think it's page 19.

20 Q. After page 19, do your initials appear on each of the
21 demonstrative exhibits, the 24 pages?

22 A. They do.

23 Q. At the time you signed the declaration, were your
24 statements truthful and accurate?

25 A. Yes.

DAG8CHE5

Russell - direct

1 Q. Is everything in your declaration truthful and accurate as
2 of today?

3 A. Yes.

4 Q. Do you offer your declaration as your full and complete
5 direct testimony?

6 A. I do.

7 MR. BRODSKY: We offer 3200.

8 THE COURT: Received on the same basis as the other
9 witness statements.

10 (Plaintiff's Exhibit 3200 received in evidence)

11 Q. Are the e-mails in your declaration that you sent and
12 received true and correct copies of the ones that you sent and
13 received?

14 A. Yes.

15 MR. BRODSKY: Your Honor, we offer in connection with
16 his declaration Plaintiff's Exhibit 688, 693, 696, 698, 699,
17 701, 704, 721, 723, 763, 766 and 788 for the truth.

18 We offer Defense Exhibits 730 and 741, which are
19 e-mails, which were marked by the defense as of August 31,
20 2013, but their numbers in recent productions from the defense
21 have changed. So since Mr. Russell signed his declaration
22 before that change, we offer them as the old exhibit numbers,
23 Defense Exhibit 730 and 741.

24 We offer Mr. Russell's cost estimate, Plaintiff's
25 Exhibit 2414, Plaintiff's Exhibit 754.

DAG8CHE5

Russell - direct

1 THE COURT: I am confused.

2 You're offering Exhibits 730 and 741.

3 MR. BRODSKY: For the truth, along with the other list
4 of the plaintiff exhibits.

5 I am about to offer some exhibits but not for their
6 truth.

7 THE COURT: OK.

8 MR. BRODSKY: The list that we are offering, but not
9 for the truth of the matters asserted therein, are Plaintiff's
10 Exhibits 2414, his cost estimate, Plaintiff's Exhibit 754, and
11 the following press releases, 466, 467, 472 to 483, 485, 486,
12 491 through 494, 497 and 499, and the timeline based on that,
13 which is an exhibit marked Plaintiff's Exhibit 2221.

14 THE COURT: OK.

15 MR. BRODSKY: No further questions.

16 THE COURT: Those will be received without objection
17 on the same basis.

18 (Plaintiff's Exhibits 688, 693, 696, 698, 699, 701,
19 704, 721, 723, 763, 766 and 788, 2414, 754, 466, 467, 472 to
20 483, 485, 486, 491 through 494, 497 and 499 and 2221 received
21 in evidence)

22 (Defendants' Exhibit 730 and 741 received in evidence)

23 MS. LITTLEPAGE: Judge, there is one part of Mr.
24 Russell's declaration that I would ask the Court to give me
25 some guidance on. It is paragraphs 24 and 25.

DAG8CHE5

Russell - direct

1 So we have some objections to Mr. Russell's written
2 declaration. We will file those. But these two paragraphs I
3 either have to cross-examine him on or not so I wanted to have
4 a discussion with the Court about them.

5 In the plaintiff's amended complaint, the plaintiff
6 identified with specificity the allegations that they were
7 making in relation to David Russell. The points made in
8 paragraph 24 and 25 are not included in the amended complaint,
9 and there is no predicate act language that would even
10 theoretically apply to paragraph 24 and 25. I don't believe
11 they have any relevance to the case. They are not for
12 foundation of any claim. They are not for foundation of any
13 predicate act or allegation.

14 THE COURT: Mr. Brodsky.

15 MR. BRODSKY: Your Honor, the complaint doesn't have
16 to list out each and every -- I know this is an extensive
17 amended complaint and it has the bulk of many allegations of
18 wrongdoing.

19 THE COURT: Almost long enough to be a 10b-5
20 complaint.

21 MR. BRODSKY: I think it's longer than that, your
22 Honor. But, clearly, the rules don't require the amended
23 complaint to contain each and every allegation of relevant
24 testimony. Paragraphs 24 and 25, regarding Mr. Russell's
25 observations and conversations with Mr. Donziger, contain

DAG8CHE5

Russell - direct

1 probative evidence that's relevant to the case and should not
2 be stricken simply because they are not exactly stated in the
3 amended complaint.

4 THE COURT: Sounds right to me, Ms. Littlepage. Why
5 not?

6 MS. LITTLEPAGE: As I read 24 and 25, the sort of
7 allegation being made is that Mr. Donziger was acting
8 inappropriate because he didn't have the money to fund a
9 specific type of investigation that Mr. Russell wanted. The
10 declaration says, Donziger refused to approve the investigation
11 that I had recommended, claiming it would be too costly.

12 I don't want to have to spend time crossing on whether
13 that's appropriate or not in the litigation for a plaintiff's
14 lawyer to not have the money to do everything that you could do
15 if it's not a predicate act and it's not an allegation that we
16 are here to rebut. I don't think it has any relevance.

17 MR. BRODSKY: The intent of that paragraph is not to
18 go to the costs. It's to go to the purpose of the estimate was
19 to pressure Chevron, and that's the relevance of the testimony.
20 If they don't want to cross-examine on the extensive costs to
21 whether or not plaintiff's lawyers have the funds to do it or
22 not, that's really not an issue, I believe, that we are
23 offering Mr. Russell for.

24 MS. LITTLEPAGE: I don't believe of what I have read
25 of the RICO laws that it can be a predicate act for a

DAG8CHE5

Russell - direct

1 plaintiff's lawyer to create evidence in a discovery phase of a
2 trial and claim that is to put pressure on the opponent to
3 resolve the case in favor of the client. That is his job, is
4 to create evidence.

5 THE COURT: Create evidence, is it really? That's
6 what plaintiffs do? I know Mr. Donziger I think said it on one
7 of the videotapes.

8 MS. LITTLEPAGE: I think the plaintiff's lawyer's job
9 is identify what evidence is needed, hire the appropriate
10 experts to address those issues, gather that evidence, submit
11 it to the court.

12 THE COURT: That's certainly a little bit different
13 than creating evidence.

14 MS. LITTLEPAGE: I have spoken inartfully, and I
15 apologize.

16 THE COURT: That's OK.

17 MS. LITTLEPAGE: I am trying to understand what I am
18 to rebut here, because I don't want to rebut things that are
19 not predicate acts, and I read the complaint trying to
20 understand the predicate acts.

21 THE COURT: Not everything in the complaint is a
22 predicate act.

23 MS. LITTLEPAGE: I understand.

24 THE COURT: OK. Let's proceed.

25 MS. LITTLEPAGE: May I approach the witness to hand up

DAG8CHE5

Russell - direct

1 a book?

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 BY MS. LITTLEPAGE:

5 Q. Good afternoon, Mr. Russell. I have put in front of you a
6 three-ring binder. It's tabbed. I have tried to highlight the
7 parts of each document that I want to talk to you about so that
8 you can follow along with me. If I lose you at any time,
9 please just tell me and I will make sure that I get your
10 attention.

11 I want to start first with, can you explain the
12 process by which your witness statement or declaration that was
13 filed as your direct testimony was created?

14 A. I am not sure I understand the terms or what sort of answer
15 you're seeking. Would you be more specific, please?

16 Q. Sure. Tab 1 of the book is your -- let me get the title --
17 declaration of David L. Russell.

18 A. That's correct.

19 Q. Can you explain to me the process by which this document
20 was created?

21 MR. BRODSKY: Objection, your Honor. It calls for a
22 narrative.

23 THE COURT: So does the question what happened -- one
24 of the standards of direct examination. Overruled.

25 A. I was subpoenaed by -- I was given a subpoena by Chevron,

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Russell - cross

1 and in the process I created a statement and shared thoughts
2 and discussions and so on. And then the attorneys for Chevron
3 typed it and had me review it and then sign it.

4 Q. They typed -- what did they type? Had they recorded your
5 words and they typed them up?

6 MR. BRODSKY: Objection, your Honor. Two questions
7 there and the last one assumes facts not in evidence.

8 THE COURT: Rephrase it, please.

9 Q. What did they type?

10 A. They typed the statement itself.

11 Q. From what?

12 A. From their notes of discussions with me.

13 Q. So when you talked about issues with the Chevron lawyers,
14 it was your understanding they were taking notes of your
15 conversation?

16 A. That is my understanding.

17 Q. And then the Chevron lawyers created this witness statement
18 based on those notes?

19 A. Yes.

20 Q. And did they write it in the first person, I, David L.
21 Russell, as it appears here?

22 A. Yes.

23 Q. And so you received something from the Gibson Dunn lawyers
24 that you were asked to review, correct?

25 A. I did.

DAG8CHE5

Russell - cross

1 Q. And then you were asked if you agreed with it to sign it,
2 correct?

3 A. I was asked to correct it and modify any sections where I
4 disagreed with it so it would be a truthful and accurate
5 reflection of my opinions and thoughts.

6 Q. And did you modify different sections?

7 A. I did.

8 Q. And if the statement had come written in the first person
9 in a way that you agreed with all of it, would you have
10 modified it?

11 MR. BRODSKY: Objection. Calls for speculation.

12 THE COURT: Sustained.

13 Q. Do you know which sections you modified or corrected?

14 A. Offhand, I cannot recall.

15 Q. Then was it your understanding that after you had signed
16 the statement provided by the lawyers that it would be filed in
17 this proceeding?

18 A. That I believe is my understanding, yes.

19 Q. Can you tell me when you arrived in New York?

20 A. Saturday. I believe Saturday was the 11th.

21 Q. This past Saturday?

22 A. This past Saturday.

23 Q. And have you had an opportunity to meet with the Chevron
24 lawyers since Saturday?

25 A. Yes.

DAG8CHE5

Russell - cross

1 Q. On how many occasions?

2 A. Probably every day since then.

3 (Continued on next page)

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DAGLCHE6

Russell - cross

1 BY MS. LITTLEPAGE:

2 Q. And do you know how many hours you have met with the
3 Chevron lawyers since Saturday until today?

4 A. Not offhand, no.

5 Q. About how many hours a day would you estimate?

6 A. Approximately, there were two meetings that lasted eight
7 hours, perhaps more. And then there were some subsequent
8 meetings which lasted less than that, and I can't tell you
9 exactly how long they were.

10 Q. By the time you arrived in New York, as I understand it,
11 your declaration was already completed and signed; is that
12 true?

13 A. That is correct.

14 Q. Were you given an opportunity to review documents in any of
15 these meetings with the Chevron lawyers?

16 A. Yes.

17 Q. And are there -- were you given an opportunity to look at
18 documents that are not identified in your declaration, in other
19 words, other documents?

20 A. I am not an expert on -- I can't tell you which documents I
21 saw specifically or which documents I did not. But the
22 documents that are referred to in here are documents that I
23 saw.

24 Q. And you would have seen those documents before you arrived
25 in New York or did you only see them once you got here?

DAGLCHE6

Russell - cross

1 A. Oh, I saw them before I arrived in New York.

2 Q. And were you given an opportunity to see new documents here
3 in New York that you don't recall seeing before?

4 MR. BRODSKY: Objection to the form of new documents.

5 THE COURT: Strike the word new. Answer the question
6 without the word new.

7 THE WITNESS: Yes, sir.

8 A. I do not believe that I saw documents that I had never seen
9 before as most of my documents were -- most if not all my
10 documents were ones that I had either written or created or
11 were direct correspondence where I was copied or -- so the
12 answer is no.

13 Q. Is it true that you have seen and reviewed documents that
14 are not identified specifically in your declaration?

15 A. I cannot answer that. I'm sorry.

16 Q. Let me step back a little bit into 2003.

17 Do you recall when you were first contacted by
18 Mr. Donziger?

19 A. The first contact came through a phone call from a search
20 firm, an expert search firm in Pennsylvania that I think I've
21 identified there.

22 Q. You actually didn't give us a name. Do you recall the name
23 of the firm?

24 A. At this moment I cannot.

25 Q. Was it a firm that you had done business with before?

DAGLCHE6

Russell - cross

1 A. Yes.

2 Q. And had you been a legal expert in litigation before
3 Mr. Donziger approached you?

4 MR. BRODSKY: Objection.

5 THE COURT: What's the objection?

6 MR. BRODSKY: Legal expert, form.

7 THE COURT: Sustained as to form. Rephrase.

8 Q. Had you been an expert in legal matters or litigation
9 before Mr. Donziger contacted you?

10 A. Yes.

11 Q. Do you recall how many times?

12 A. Perhaps four or five. I do not recall specifically.

13 Q. And were you -- had you listed yourself with the expert
14 search firm that contacted you?

15 A. Yes.

16 Q. And the work that you done in the past as an expert in
17 litigation, had that been -- had all that work been done
18 through that same expert search firm?

19 A. Would you clarify, please, or restate.

20 Q. Sure. The previous times that you had been an expert in
21 litigation matters, were all of those times situations that
22 came from that same expert search firm?

23 A. Best of my belief and recollection, yes.

24 Q. Were you listed at the time in 2003 with multiple expert
25 search firms?

DAGLCHE6

Russell - cross

1 A. I honestly don't recall.

2 Q. You had your own company called Global Environmental
3 Operations; is that correct?

4 A. That is correct.

5 Q. Do you still have that company?

6 A. I do.

7 Q. And how long have you operated as -- let me ask a better
8 question.

9 Are you the CEO or the president, how would I -- what
10 are you in that company?

11 A. I often refer to myself as chief cook and bottle washer.
12 But it was originally a and still is a stock corporation. It
13 was originally the stock was owned by my wife and when she
14 passed, it devolved to me.

15 Q. And how long had you -- let me ask you better question.

16 Is Global Environmental Operations a company that does
17 things other than expert work for litigation?

18 A. Yes.

19 Q. How long have you worked for Global Environmental
20 Operations?

21 A. Since it was founded.

22 Q. Which is when, sir?

23 A. I think it was '86, but it may have been a little bit
24 later.

25 Q. And when Mr. Donziger approached you, had you ever met

DAGLCHE6

Russell - cross

1 Mr. Donziger before?

2 A. No.

3 Q. And did you agree to go to Ecuador and work on this, on his
4 case with him?

5 A. My first meeting with Mr. Donziger was in New York. It was
6 an interview. After that, he indicated that he wanted me to go
7 down to Ecuador. There may have been one meeting in New York,
8 there may have been two, I don't recall. But the sum and
9 substance was that I was to go down to Ecuador to work on this
10 case.

11 Q. And did you agree to work on the case as an expert?

12 A. I did.

13 Q. Do you speak Spanish, sir?

14 A. No.

15 Q. As I read your declaration, it appears that you had two
16 distinct roles in the case. Let me ask you about the first
17 role. The first role was to do a cost estimate for
18 remediation. Would that be correct?

19 MR. BRODSKY: Your Honor, objection to the
20 characterization of the two roles.

21 THE COURT: Sustained.

22 Q. Was one of your roles as an expert in this case to do a
23 cost estimate for remediation?

24 A. Yes.

25 Q. And was another role to be the environmental scientist in

DAGLCHE6

Russell - cross

1 the Ecuadorian litigation?

2 A. The environmental scientist is not a term I would use. I
3 was being contemplated and prepared as a potential witness.
4 Now, if that constitutes being the designated environmental
5 scientist, that would be correct.

6 Q. If you turn to page 10 of your witness statement, it says
7 at the top of the page, my role as chief environmental
8 scientist for Donziger.

9 Were those words chosen for you by Gibson Dunn or was
10 that your selection of words to describe your role?

11 A. That was in 2004 and not with -- the next line clearly says
12 from the summer of 2004 through the end of 2004. So it was not
13 my initial assignment in Ecuador.

14 Q. Okay. Maybe I wasn't clear them.

15 Was one of your roles as an expert in this case to be
16 the chief environmental scientist on the case?

17 A. That would be more or less my understanding, yes.

18 Q. As I understand, you started working on the case in the
19 fall of 2003; is that correct?

20 A. The work on the case in 2003 predominantly consisted of my
21 first visit to Ecuador and preparation of the cost estimate.
22 Between -- after the trial ended in 2003, there was not much
23 activity until 2004.

24 Q. Okay. Do you recall when you first went to Ecuador in the
25 fall of 2003?

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Russell - cross

1 A. Yes.

2 Q. What date was that?

3 A. I believe it was sometime in October, but I'm not sure as
4 far as the dates.

5 Q. And you would agree, sir, that you went voluntarily to
6 Ecuador, true?

7 A. Yes.

8 Q. And how long did you stay on that first visit in October of
9 2003?

10 A. A number of days, perhaps two weeks or so.

11 Q. And did you stay the whole time in Quito or did you
12 actually go out and stay in Lago Agrio?

13 A. I went into Quito because that is the principal airport and
14 then spent the predominant bulk of my time from there in Lago
15 Agrio.

16 Q. And how did you get from Quito to Lago Agrio, did you fly?

17 A. Yes.

18 Q. And then from the town of Lago Agrio, did you go out to
19 actually visit a number of sites?

20 A. Yes.

21 Q. How many sites did you visit?

22 MR. BRODSKY: Your Honor, objection to the form of
23 sites. I'm not sure what sites.

24 THE COURT: Rephrase it, please.

25 Q. Let me ask a better question.

DAGLCHE6

Russell - cross

1 How many pits did you visit in that first visit in
2 Ecuador in October of 2003?

3 A. I believe my cost estimate mentions 45, but I'm not -- in
4 recollection, that was ten years ago. I cannot confirm that it
5 was 45, but a number.

6 Q. If you turn to tab 2 of your book, it's Plaintiff's
7 Exhibit 2414 that was just moved into evidence by the
8 plaintiffs. As you can see highlighted in the second paragraph
9 you indicate approximately 45 pits.

10 Is that your best recollection as to how many pits you
11 visited on that trip?

12 MR. BRODSKY: Objection, asked and answered.

13 THE COURT: Overruled.

14 A. I believe it was 45, but it could have been more, it could
15 have been slightly less. I have no specific recollection of
16 the precise number.

17 Q. And when you went to visit the pits, who went with you?

18 A. Members of -- let me correct that. Spanish speaking
19 members who were familiar, were familiar with the area. I do
20 not recall specifically who went with me.

21 Q. Did you go to different pits each day for some part of the
22 two weeks you were there?

23 A. Yes.

24 Q. And it indicates in paragraph 2 of your report that this
25 estimate is based on investigation and a projection of the cost

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Russell - cross

1 based upon my observations. Do you see that, sir?

2 Sorry, it's the first page, the second paragraph, last
3 sentence. I should probably have told you that. I'm sorry.

4 A. Second paragraph, last sentence, correct?

5 Q. Yes, sir. That your report is based on an investigation
6 and a projection of the costs based upon your observations?

7 A. Yes.

8 Q. And is it true, sir, that you didn't just sit in a hotel
9 room and come up with numbers, you actually went out to sites
10 and saw pits?

11 A. Yes, I saw pits. I saw stations. I saw sites that had
12 been remediated. It was a broad tour of the oil concession
13 areas.

14 Q. Did you take photographs or videos of what you were seeing?

15 A. I believe I took a few.

16 Q. And did you take measurements of the size of the pits or
17 the size of the concession area?

18 A. No.

19 Q. If you look further down on the page, the first page of
20 Plaintiff's Exhibit 2414, it indicates, first of all, that you
21 looked at open drill pits that were several meters deep and may
22 contain free oil, barium sulfate, drilling fluids, and
23 petroleum residuals.

24 Do you see that, sir?

25 MR. MASTRO: Your Honor, two things. One, this is a

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Russell - cross

1 document that's not in for its truth. And, two, we would move
2 to preclude an examination over barium sulfate and drilling
3 fluids and petroleum residuals. This is getting far afield
4 into Mr. Russell's testimony which is his cost estimate was
5 based on representations of Mr. Donziger and when he indicated
6 what he indicated to him, it continued to be used.

7 THE COURT: For the moment it seems like appropriate
8 cross. Overruled.

9 THE WITNESS: Would you restate the question, please.

10 Q. Sure. Do you see on the first Roman numeral one, pits, the
11 pits you observed were several meters deep and may contain free
12 oil, barium sulfate, drilling fluids, and petroleum residuals.

13 Do you see that, sir?

14 A. Which page are we on, please?

15 Q. Page 1, No. 1.

16 A. No. 1. Yes.

17 Q. Did you measure the drill pits in order to estimate that
18 they were several meters deep or how did you get that
19 calculation to put into this estimate?

20 A. An associate of Mr. Bonifaz by the name of Manuel Pallares
21 provided a CD that had approximate information. He had done
22 some preliminary survey to enumerate the number of pits and the
23 approximate dimensions.

24 Q. So you were provided a CD of photographs or measurements or
25 documents, can you describe what the CD was?

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Russell - cross

1 A. As I recall, the CD had some photographs and it had
2 approximate dimensions of a number of the pits. I cannot be
3 more certain than -- I cannot say, yes, all of the pits. A
4 number of the pits, yes.

5 THE COURT: When you refer to a number of the pits or
6 all of the pits, what's the approximate number in the universe
7 to which you are referring? Is it 45 plus or minus or is it
8 something else?

9 THE WITNESS: I believe, the best of my recollection,
10 the number is somewhere above 600, almost 700 pits total. It
11 may be as high as 900, but somewhere around 700 is the number
12 that sticks in my memory, your Honor.

13 THE COURT: Thank you.

14 Go ahead, counsel.

15 Q. And so when you looked at approximately 45, did you look at
16 a variety of different kinds of pits?

17 MR. BRODSKY: Objection, misstates the testimony.

18 THE COURT: I'm sorry?

19 MR. BRODSKY: It misstates his testimony about 45.

20 THE COURT: Overruled.

21 THE WITNESS: Rephrase or re-ask, please.

22 Q. Sure. When you say that you saw approximately 45 pits, did
23 you see a variety of different kinds of pits or pits in
24 different locations or areas?

25 A. Yes.

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Russell - cross

1 Q. Did you see some pits where only Texaco had operated that
2 site and the site had not been operated again since Texaco left
3 Ecuador?

4 A. I could not make that evaluation at that time because I was
5 told that everything had belonged to Texaco and that Texaco was
6 totally responsible for all contamination regardless of who was
7 operating the pits. Texaco had allegedly provided the
8 technology and that that was the, supposedly, the technology
9 that was available.

10 Q. Okay. So let me ask you a follow-up question then.

11 You were asked to assume a legal theory of operator
12 liability that you were to look at all of the pits and make an
13 estimate irrespective of whether the pit was currently operated
14 by Petroecuador or had not been operated since Texaco left; is
15 that true?

16 MR. BRODSKY: Objection to the form and calls for a
17 legal analysis.

18 THE COURT: Certainly the objection to form is
19 sustained.

20 Q. Let me break it down then, sir.

21 Were you asked to make -- were you given some
22 assumptions to use in your cost estimate?

23 A. Yes.

24 Q. Was one of the assumptions that you were given to consider
25 is that you were to evaluate the effect that you were seeing in

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Russell - cross

1 the field irrespective of Texaco or Petroecuador or any
2 specific name of a company?

3 A. I was told that part of my assumptions would be that
4 everything that I saw was the responsibility of Texaco.

5 Q. And you understood that was Mr. Donziger's claim that what
6 was happening in the concession area was the responsibility of
7 Texaco as the original operator of the whole area?

8 MR. BRODSKY: Objection.

9 THE COURT: Sustained in that form.

10 Q. Did you have, did you understand Mr. Donziger -- let me ask
11 a better question.

12 Were you asked to assume that everything that you saw
13 in the concession area should be taken into account for the
14 cost estimate?

15 A. I was told that Texaco was responsible for everything, all
16 of the environmental damage that was observed in the concession
17 area.

18 Q. Did you have an understanding that the lawsuit on behalf of
19 the Ecuadorians was for holding Texaco responsible for
20 everything in the concession area?

21 MR. BRODSKY: Objection.

22 THE COURT: Objection is sustained. Among other
23 points, they never sued Texaco in Ecuador.

24 Q. Mr. Russell, do you recognize or did you hear at that time
25 the words joint and several liability, does that mean anything

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Russell - cross

1 to you?

2 MR. BRODSKY: Objection.

3 THE COURT: Sustained.

4 Q. Did you ever hear the words or understand the concept of
5 operator liability?

6 MR. BRODSKY: Objection.

7 THE COURT: Sustained.

8 Q. Did you understand that one of the assumptions you were
9 being asked to make is that the claims being raised on behalf
10 of the afflicted Amazonians was for everything that was damaged
11 in the concession area?

12 MR. BRODSKY: Same objection, your Honor.

13 THE COURT: What's the objection this time?

14 MR. BRODSKY: It's, first, it's hearsay. Second, it's
15 to the form. And it seems another way of wording the legal
16 theory of the case.

17 THE COURT: Sustained.

18 Q. If you look at tab 2, Plaintiff's Exhibit 2414, No. 2, are
19 you with me, sir?

20 A. I am.

21 Q. The second thing you observed was open production and waste
22 oil pits. Do you see that?

23 A. I do.

24 Q. I didn't ask you for No. 1 the open drill pits, can you
25 tell me what an open drill pit is?

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Russell - cross

1 A. My best understanding of an open drill pit is that in the
2 process of drilling back in the seventies, when there were no
3 environmental regulations, one of the practices was to take the
4 wastes which were used that consists of oil, consists of drill
5 muds, weighting agents, and anything else that might have come
6 out of the bore hole and to drain them from the actual drill
7 site into a pit.

8 An open drill pit by that definition would be one that
9 was still open to the environment.

10 Q. And is there a closed drill pit, is there some distinction
11 between an open drill pit and a closed drill pit?

12 A. A closed drill pit would be a remediated pit. Current
13 technology in the past five or ten years has had some of the
14 oil producing states, such as Texas and Oklahoma, and that
15 recognize that these old pits were in existence and they come
16 in, scoop up the material and dispose of it and then close the
17 pit by sealing it over with fresh earth.

18 Q. So in your visit in October of 2003, you saw open drill
19 pits, drill pits that had not been remediated?

20 A. Yes.

21 Q. Do you recall how many open drill pits you observed in that
22 first visit?

23 A. No, I do not, because the trip was over -- I spent perhaps
24 a week. I'm not certain of the exact time frame, but let's say
25 for sake of estimation between five and seven days riding

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Russell - cross

1 around to various locations. And in the process, sometimes
2 along the side of the road you may see an open pit. Sometimes
3 I was taken to locations where they had performed remediation.

4 And when you're driving along the side of the road at
5 normal speeds of 40 or 50 miles per hour, perhaps, down there,
6 you may have a pit coming up on one side of the road. Okay,
7 that's a pit, and go on. And you have a three second, five
8 second, ten second glance at it.

9 Q. And some of the pits you stopped, got out, went and saw
10 them, photographed them --

11 A. Yes, yes.

12 Q. -- correct. Did you ever ask the people that were taking
13 you around to stop at a particular pit and you were not allowed
14 to stop?

15 MR. BRODSKY: Objection, your Honor. Relevance.

16 THE COURT: Sustained.

17 Q. Okay. No. 2 on Plaintiff's Exhibit 2414 is open production
18 and waste oil pits. Can you explain to me what is an open
19 production and waste oil pit?

20 MR. BRODSKY: Objection relevance, your Honor.

21 THE COURT: Look, I'll let this go a little longer but
22 this is pretty far afield.

23 A. An open production and waste oil pit is generally at a
24 separation station. And to clarify, the oil is taken from the
25 ground by usually a jack pump which is -- it's kind of out of

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Russell - cross

1 the discussion here, but it's a pump and put in a pipeline and
2 sent to a separation station.

3 Now, the reason it is sent to a separation station is
4 because in the process of pulling the oil from the ground, you
5 also get formation water. And the formation water is generally
6 between 3 barrels and 10 barrels of water per barrel of oil.

7 So the separation station puts this in either pits or
8 tanks and allows gravity to separate and then discharges the
9 waste water and then collects, collects the good oil and will
10 oftentimes just leave the waste oil or heavy oils alone in a
11 separate pit.

12 Q. And what your No. 2 indicates is that you observed dumped
13 waste oils, other fluids on one or more occasions, and may
14 contain between 5 percent and 40 percent free oils.

15 Did you do any testing to come up with your
16 percentages of between five and 40 percent that's noted in your
17 report?

18 MR. BRODSKY: Objection. The report is not in
19 evidence for its truth. That was a compound -- it was a
20 statement and then a compound question on top of it.

21 THE COURT: Sustained.

22 Q. Let me ask a better question.

23 Did you do any specific calculations or evaluation
24 yourself to come up with the number between 5 percent and
25 40 percent free oils that's addressed in your estimate?

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Russell - cross

1 MR. BRODSKY: Assumes facts not in evidence.
2 Objection.

3 A. No.

4 Q. Where did you get the numbers 5 percent and 40 percent
5 from?

6 A. Research figures, my own experience as a wastewater
7 treatment engineer, industrial waste experience, general
8 observation. The wide range is just that, a wide range,
9 because there was no testing of any type done.

10 THE COURT: So are you saying in essence it could have
11 been 5 percent, 40 percent, 0 percent, 80 percent, they're just
12 numbers that have no specific relationship to the specific pits
13 you're talking about here; is that correct?

14 THE WITNESS: Up to a point, yes, sir.

15 THE COURT: Up to what point?

16 THE WITNESS: The thing is if it had 0 percent, it
17 would have a different look. If it had 5 percent free oil, you
18 might notice a relatively thin film on the top of one of the
19 pits. If it had 40 percent oil, it would have a more viscous,
20 darker appearance, perhaps black and blacker and much more
21 viscous.

22 A good example might be something like one of the
23 pits, I think it was associated with Texaco's well No. 1, where
24 it was a favorite pastime on what was referred to as the toxic
25 tour, when they would take a rock and toss it in the middle of

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Russell - cross

1 this pit, this open pit. And instead of going splash, you'd
2 hear something that would sound like a glup and this was an
3 indication of a viscous oil.

4 THE COURT: So this is based not on any chemical
5 analysis. It's based on eyeballing it, sometimes at 40 or
6 50 miles per hour, is that it?

7 THE WITNESS: In some cases. In other cases, actual
8 inspection on the site.

9 THE COURT: Okay. Let's move on.

10 Q. And these numbers were not provided to you, this five to
11 40 percent, five and 40 percent were not provided to you by
12 Mr. Donziger. They were based on your research, experience,
13 and observations?

14 MR. BRODSKY: Objection to form.

15 A. Correct.

16 MR. BRODSKY: There were multiple questions in there.

17 THE COURT: It's all right. Overruled.

18 A. Correct.

19 Q. You also indicate that typical oil station appears to
20 contain one pit or more pits of fairly substantial size.

21 Again, were you provided any dimensions to come up
22 with your fairly substantial size description in your cost
23 estimate?

24 MR. BRODSKY: Objection. I'm sorry to object again,
25 your Honor, but the document is not in evidence for its truth

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Russell - cross

1 and this is far afield. It's not relevant.

2 THE COURT: Overruled.

3 THE WITNESS: Would you state the question again,
4 please.

5 Q. Sure. You indicate in your cost estimate that one of the
6 bases of your cost estimate is that typical oil station appears
7 to contain one pit or more pits of fairly substantial size.

8 Did you measure to come up with the fairly substantial
9 size description or were you given data to make that
10 conclusion?

11 A. Neither. Sorry. It was a visual estimate because it was
12 on fenced-in property which we were not permitted to access.
13 So depending upon the calibration of my eyeball, I could say
14 substantial size.

15 Q. Got it. It wasn't a number or a figure Mr. Donziger gave
16 you, it was based on your training, experience, and visual
17 observation?

18 MR. BRODSKY: Objection.

19 THE COURT: Well, it's compound. Break it up.

20 Q. Was it based on your visual observation?

21 A. Yes.

22 Q. Did you consider these pits to be of fairly substantial
23 size based on your experience?

24 A. They were bigger than the drill pits. So, yes.

25 Q. Did you actually visually go to any of the sites where you

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Russell - cross

1 could by your training and experience assess closer to a
2 40 percent number versus a 5 percent number?

3 MR. BRODSKY: Objection to the form.

4 THE COURT: Overruled.

5 A. I believe I answered that question with regard to, for
6 example, Texaco well No. 1.

7 Q. My question -- you actually stopped and went and saw Texaco
8 well one?

9 A. Yes.

10 Q. And did you see the rock being thrown into the open pit
11 yourself?

12 MR. BRODSKY: Objection, your Honor. Isn't this far
13 afield?

14 THE COURT: Yes, of course it is.

15 A. I threw one in, yes.

16 Q. No. 3.

17 THE COURT: Just so that we don't miss any detail
18 here, did you watch it all the way in from the point of
19 release?

20 THE WITNESS: I threw it in and I watched it, sir.

21 THE COURT: Okay. Thank you. I wouldn't want any
22 rock to be unturned.

23 THE WITNESS: Or disappear.

24 Q. No. 3, open drill pits with vegetative cover. You indicate
25 in this one that these pits had some vegetative cover. I have

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Russell - cross

1 estimated in spots the cover may be full or partial and may be
2 between 15 and 30 centimeters thick, floating on a layer of
3 water and oils.

4 Can you first describe what is an open drill pit with
5 vegetative cover?

6 A. It's just that. It is an area which has substantial
7 foliage, i.e., trees growing around it. And over the years the
8 trees have dropped leaves and the leaves have formed a mat on
9 top of the oil. And in some cases you could step on this and
10 could you feel it move beneath your feet.

11 In other cases, there was one report of one of the
12 members of -- I think it was Mr. Pallares --

13 MR. BRODSKY: Objection, your Honor.

14 THE COURT: Let's stay away from what reports there
15 were.

16 Q. Let me ask you this: Did you go to an open drill pit with
17 vegetative cover and walk on it and feel the layer of water and
18 oils below the vegetative cover?

19 A. The site was -- some of these sites were identified as
20 former locations where there were open drill pits and, yes, I
21 did at least put my foot out on there and felt it give. So I
22 wasn't about to go swimming.

23 Q. And those would be open drill pits that were not currently
24 being operated by anybody, they had been -- would that be true?

25 MR. BRODSKY: Objection.

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Russell - cross

1 THE COURT: Overruled. I'm sorry. Sustained. He's
2 talking about a pit where he put his toe on something.

3 Q. Let me ask a better question.

4 What's in No. 3, these open drill pits with vegetative
5 cover, would those all be drill pits that were no longer
6 currently being operated by any company?

7 MR. BRODSKY: Your Honor, objection. Lacks
8 foundation.

9 A. I couldn't say.

10 THE COURT: Overruled.

11 MS. LITTLEPAGE: Hold on.

12 THE COURT: Go ahead.

13 A. I couldn't say. It was a pit that had -- it was covered
14 with a vegetative cover and it was squishy. It's kind of like
15 stepping on the soft surface of a sponge but a very big sponge.

16 Q. Did you do any actual measurements yourself to come up with
17 the 15 to 30 centimeters thick number that's in your cost
18 estimate?

19 A. No.

20 Q. Was that this number based on your training and experience
21 of what you believed -- tell me where the number came from, 15
22 to 30 centimeters.

23 A. A rough estimate that would be between six and 12 inches.

24 Q. And in your experience, is that what in your training and
25 experience, is that what you believed the measurement would be

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Russell - cross

1 if you had measured it?

2 MR. BRODSKY: Objection.

3 THE COURT: Sustained.

4 Q. Now, as I understand it, let me ask the question actually.

5 Did you do all of the site inspections or all the site
6 reviews before you sat down and started calculating your cost
7 estimate?

8 MR. BRODSKY: Objection to the form.

9 THE COURT: Sustained as to the form.

10 Q. Did you do any cost estimates before you finished looking
11 at all the sites, the 45 that you talk about?

12 A. I started preparing the cost estimates, but did not work on
13 the completion of the cost estimate until after I had seen
14 the -- a number of the pits. So the answer is did I do it
15 beforehand? I may have started it, but it was not, it was not
16 finalized in any way, shape, or form until after I had had a
17 thorough examination.

18 Q. And you indicate in your witness statement that you sat in
19 a hotel room, I think in an empty ballroom, and spent several
20 days doing calculations.

21 Can you describe that process for us?

22 A. I needed a quiet place to work. It was the Hotel Lago in
23 Lago Agrio and the ballroom was unoccupied. So I sat on a bar
24 stool at a table or something like that and worked on the cost
25 estimate.

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Russell - cross

1 Q. How many days do you think -- I know you said you sort of
2 worked on it a little bit the whole time, but how many days in
3 the Hotel Lago did you spend concentrating on the cost
4 estimate?

5 A. I honestly can't recall. It may have been two. It may
6 have been three.

7 Q. And you said you needed a quiet place. Were you there
8 alone or was anybody with you?

9 A. I was essentially alone, but Mr. Donziger came in on a
10 couple of occasions to see how I was doing.

11 Q. I didn't hear. Mr. Donziger?

12 A. Mr. Donziger visited periodically to see how I was doing.

13 Q. Did Mr. Donziger sit with you and do any of the
14 calculations himself?

15 A. No.

16 Q. Were all the calculations that you did that formed the
17 basis of your cost estimate done by you?

18 A. I believe I also referred to that CD which was provided me
19 with some rough numbers in order to come up with rough
20 quantities.

21 Q. And other than the CD that had dimensions and some
22 additional information, were you provided any other materials
23 in forming the basis of your cost estimate?

24 A. Could you be more specific?

25 Q. I don't know the answer to my question. So were you given

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Russell - cross

1 any other documentation that you reviewed or looked at when you
2 were creating your cost estimate?

3 A. Given any other documentation, no.

4 Q. Were you provided any other materials of any kind?

5 MR. BRODSKY: Objection. Asked and answered.

6 THE COURT: Overruled.

7 A. I had my own book from 1992 if that's -- but I wasn't given
8 that. That was in my possession.

9 Q. And were you using your book as a reference in creating
10 these calculations for your cost estimate?

11 A. On occasion.

12 Q. Was one of the assumptions that you were given in creating
13 this cost estimate an assumption that Mr. Donziger was seeking
14 a full and complete compensation for the afflicted or affected
15 Amazonians?

16 MR. BRODSKY: Objection to form.

17 THE COURT: What's the form problem?

18 MR. BRODSKY: Full and complete, afflicted or
19 affected.

20 THE COURT: Sustained. Rephrase.

21 Q. You tell me. What words are you comfortable for me using
22 to represent the affected people of the Amazon?

23 THE COURT: Ms. Littlepage, you ask the questions,
24 please.

25 Q. Was one of the assumptions you were asked to make is that

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Russell - cross

1 Mr. Donziger was looking for a full and complete compensation
2 for the people impacted in the concession area?

3 MR. BRODSKY: Same question.

4 THE COURT: Sustained. You want to ask what
5 Mr. Donziger told him, ask.

6 Q. Did Mr. Donziger tell you anything about whether he -- what
7 type of remediation effort he was looking for on behalf of the
8 people impacted in the concession area?

9 THE COURT: Ms. Littlepage, Mr. Brodsky has risen and
10 I anticipate that the objection is the same.

11 Right, Mr. Brodsky?

12 MR. BRODSKY: Yes, your Honor.

13 THE COURT: Okay. And the ruling is the same. You
14 can ask what you need to ask without larding it up with the
15 plaintiff's closing argument -- the defendant's closing
16 argument in this case, everybody being on both sides one place
17 or the other.

18 MS. LITTLEPAGE: I was trying to do that math in my
19 head, Judge.

20 THE COURT: I know it's very difficult.

21 Q. What type of assumptions were you asked to take into
22 account when you were doing this cost estimate as to the type
23 or level of remediation?

24 MR. BRODSKY: Objection to the form.

25 A. I was asked to determine what it might cost to clean up the

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Russell - cross

1 area. There was no standard given. There was initial, as I
2 recall, there may have been an initial question about health
3 effects, but I indicated early on that I could not answer
4 questions about health effects with regard to the clean up
5 because I am not medically trained.

6 Q. And is that true that your cost estimate includes no
7 figures for health effects?

8 A. That is correct.

9 Q. What assumption were you asked to -- what type of
10 remediation were you considering in this cost estimate?

11 MR. BRODSKY: Your Honor, objection to the relevancy
12 of this line of questioning.

13 THE COURT: Well, how about that, Ms. Littlepage,
14 what's the relevance?

15 MS. LITTLEPAGE: I believe the amended complaint says
16 that Mr. Russell's cost estimate was based on inaccurate
17 assumptions or theories of Mr. Donziger.

18 I would like to establish that Mr. Russell's estimate
19 was based on Mr. Russell's own belief of what it would take or
20 what it would mean to remediate the concession area. It has
21 nothing to do with Mr. Donziger and, therefore, he had no
22 intent underlying these actions.

23 THE COURT: I'm sorry, who had no intent underlying
24 what?

25 MS. LITTLEPAGE: That Mr. Donziger had no criminal

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Russell - cross

1 intent or predicate intent or RICO intent or fraudulent intent
2 in his request of Mr. Russell, and it's Mr. Russell's own
3 observations, assessment, and analysis that form the basis of
4 the cost estimate.

5 MR. BRODSKY: That is ignoring what his direct
6 testimony is in the case, ignoring --

7 THE COURT: Cross-examiners are entitled to do that,
8 aren't they?

9 MR. BRODSKY: Sure, if they're asking about relevant
10 matters. What she's asking about is simply the underlying --
11 the underlying assumptions he was given are not really
12 relevant. What's relevant is his determination, what he was
13 told the purpose of it was for, and then when he determined it
14 was not accurate, they continued to tout his estimate.

15 Regardless of the underlying assumptions of whether
16 they're correct or incorrect, retrying that litigation of
17 contamination is not relevant to what we offered Mr. Russell's
18 testimony for.

19 THE COURT: Look, Ms. Littlepage pointed to the
20 complaint which makes in that paragraph that she drew to my
21 attention earlier two assertions. One is that the numbers
22 were, if I remember the precise quotation, wildly exaggerated.
23 And the second was one that related to the repetition after the
24 witness said these are not appropriate and you can't rely on
25 what I told you before. Correct?

DAGLCHE6

Russell - cross

1 MR. BRODSKY: Your Honor, it does say to develop an
2 exaggerated damages estimate, within a long sentence on
3 paragraph 101.

4 I don't read that as the thrust of the complaint that
5 we're emphasizing whether or not the estimate was accurate.
6 The thrust of that complaint is that Mr. Donziger used it to
7 put out a figure that will scare Chevron and investors long
8 after Russell sends Donziger a cease and desist letter
9 demanding that he stop using the estimate.

10 And regardless of whether or not you prove or disprove
11 the existence of contamination or whether an assumption was
12 accurate or inaccurate, once Mr. Russell made a determination
13 and told him to stop using it and he continued to use it, our
14 point is that those were overt acts in furtherance of the RICO
15 enterprise and part of the pressuring Chevron regardless of the
16 truth.

17 THE COURT: Yes.

18 MS. LITTLEPAGE: Judge, if Chevron is willing to
19 stipulate that they are not proceeding on any allegation that
20 Mr. Russell was -- that Mr. Donziger pressured Mr. Russell to
21 develop an exaggerated damages estimate, I can move on. But
22 the "and" tells me I have to address both issues. I haven't
23 gotten to the second issue yet. But if they stipulate they're
24 withdrawing the claim as to the first issue, I can move on.

25 MR. BRODSKY: In order for Mr. Russell to reach his

DAGLCHE6

Russell - cross

1 conclusion and say they're wildly inaccurate, that's relevant
2 that he reaches that conclusion and he tells --

3 THE COURT: At a subsequent point; is that right?

4 MR. BRODSKY: At the end of 2004. By the end of 2004
5 he reaches that conclusion.

6 THE COURT: So are you saying that Chevron is not
7 contending that at the time he formulated the evidence it was
8 not wildly exaggerated, at least in the witness's mind?

9 MR. BRODSKY: Well, in the witness's mind -- I think
10 his direct testimony is he relied on others at that time,
11 Mr. Donziger, and he determined after being on the case through
12 2004 that it was wildly inaccurate, if you're taking from his
13 perspective.

14 THE COURT: Well, look. I have another case waiting
15 now. I think you and Ms. Littlepage ought to talk about this
16 overnight. And if you can agree on a result, that's fine. And
17 if you can't, I expect to hear from you about exactly what
18 you're doing in relation to the point Ms. Littlepage makes, if
19 anything.

20 MR. BRODSKY: Yes, your Honor.

21 THE COURT: Okay. Thank you.

22 (Adjourned to October 17, 2013 at 9:30 a.m.)
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754, 466, 467, 472 to 483,	
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